S. HRG. 104–579

IMPLEMENTATION OF THE SMALL BUSINESS AGENDA

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JUNE 5, 1996

Printed for the Committee on Small Business

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[ERRATA] S.HRG. 104-590

104

IMPLEMENTATION OF THE SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JULY 24, 1996

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CONTENTS

Opening Statements

Witness Testimony

Alphabetical Listing and Appendix Material Submitted

Comments for the Record

IMPLEMENTATION OF THE SMALL BUSINESS AGENDA

WEDNESDAY, JUNE 5, 1996

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The Committee met, pursuant to notice, at 10:03 a.m., in Room 428A, Russell Senate Office Building, the Honorable Christopher S. Bond (Chairman of the Committee) presiding.

Present: Senators Bond, Burns, Coverdell, Frist, and Wellstone.

OPENING STATEMENT OF THE HONORABLE CHRISTOPHER S. BOND, CHAIRMAN, COMMITTEE ON SMALL BUSINESS, AND A UNITED STATES SENATOR FROM MISSOURI

Chairman BOND. Good morning. The Senate Small Business Committee hearing will come to order. I have been advised by the staff of our Ranking Member, Senator Bumpers, that we should go ahead and not wait for him. Delighted to have Senator Burns with us today, and we very much appreciate the witnesses who have joined us.

It has been a year since the White House Conference on Small Business brought over 2,000 small businessmen and women to Washington to identify the top priorities for small business. This is also Small Business Week. Today, we are going to examine how the small business agenda, as developed by the recommendations of the White House Conference and in this Committee's hearings on Entrepreneurship in America, is being implemented by the Federal Government.

The White House Conference on Small Business identified paperwork reduction as one of the top priorities for small business. Even before the final Conference convened in Washington, Congress had passed without a single dissenting vote the Paperwork Reduction Act of 1995, designed to minimize the paperwork burdens on small businesses and to ensure that we do not permit the Government to collect a lot of useless information. The 1995 Act builds on the 1980 Paperwork Reduction Act by adding significant new provisions, such as requiring third-party disclosures—for example, OSHA's Material Safety Data Sheets—to be included in calculating an agency's paperwork burden.

As a cosponsor of the 1995 Act, I believe paperwork reduction is not just some vague dream of textbook Government regulatory management. The Act requires Federal agencies to reduce their paperwork burden by 10 percent this year and next year, with 5 percent annual reductions required thereafter. These levels of paper-

work reduction can happen; it has been done before. Between 1983 and 1986, the total Government paperwork burden went down by more than 10 percent. The executive branch of Government can accomplish paperwork reduction if they are willing to make it a top priority.

The cost of this paperwork burden is enormous and has been well-documented. This hidden tax comes to over $400 billion a year, with small business costs alone estimated at $100 billion. Keep in mind, this is not the cost of complying with substantive Federal regulations, such as those requiring that health, safety, and environmental activities be conducted in a certain manner. These figures simply represent the cost of preparing and filing forms, reports and other paperwork required by Federal agencies.

As we continue our efforts to address legitimate small business concerns, I think it is important for us to recognize that the Paperwork Reduction Act, the Small Business Regulatory Enforcement Fairness Act, and the newly strengthened Regulatory Flexibility Act, to name just a few, are tools provided by Congress to support the implementation of the small business agenda on regulation and paperwork. We hope today to draw a clearer picture of how these tools are being used by the Federal agencies in this Administration to implement small business priorities at the ground level, where small businesses actually confront these problems in their daily activities.

Over this past week when we were on recess I held a number of meetings and heard again the stories that small businesses tell about how their burdens are significant. One dry cleaner told me that the very significant requirements for reporting uses of solvents required as much as 2 weeks of paperwork to find out how much solvent the dry cleaners had used. He suggested that perhaps just asking the supplier of solvents how much he had purchased would accomplish the same thing eliminating the 2 weeks of work necessary to figure out the square roots and the cube roots of various formula that the State agency uses to meeting the Federal requirement.

Today, we will first hear testimony from the General Accounting Office on the administration's progress to date in implementing the historic 1995 legislative improvements to the Paperwork Reduction Act.

Following the GAO testimony, we will give attention to implementation of other aspects of the small business agenda. In the year since the White House Conference on Small Business in 1995, numerous issues of concern to small business have come before Congress or have arisen within the context of administrative actions.

We want to examine the activities of SBA's Office of Advocacy and the fulfilling of its role to be a voice for small business in promoting the small business agenda within the executive branch. Federal law charges the Chief Counsel for Advocacy with responsibility, and gives the chief counsel the independence to act on this responsibility, to be a policy advocate for small business within the administration for the interest of America's small businesses. We want to determine if the Office of Advocacy has adequate means to

be an effective voice for small business; and if so, whether this objective is being pursued effectively.

To assist us, we will hear from small business witnesses with unique perspectives on the small business agenda and its relationship with the Office of Advocacy at the Small Business Administration.

Before turning to our witnesses I would now like to call on Senator Burns for his opening statement.

OPENING STATEMENT OF THE HONORABLE CONRAD BURNS, A UNITED STATES SENATOR FROM MONTANA

Senator BURNS. Thank you, Mr. Chairman. I appreciate you holding these hearings today because I think it is very important, all of us just coming off of a week in our home States and talking to people up and down Main Street in Montana, or our respective constituencies. In my State of Montana, of course, small business comprises 98 percent of the businesses in my State.

The recommendations that came out of the recently held White House Conference on Small Business, I just want to highlight a couple of those and bring them to the attention of those who will be testifying here today, and also to the attention of us in Congress and our colleagues on what we should be doing and what the Administration should be doing. If these are really problems that are hampering our small businesses, from getting them off the ground, making them viable, providing some job opportunities, expanding the job base, then we should listen to what came out of that conference.

Recommendation number 34 is a good example: the home office deduction which would allow small business folks to deduct the expenses of their home offices. We did a study through the Transportation Department on what the effect of telecommuting would do. If folks even in this area around Washington, D.C. only come into Washington say 3 days out of the 5, what effect would that have on our transportation system? What effect would that have on our energy use? What effect would that have on our environment? We found that the numbers were staggering on what we could save.

Basically, when we install a fax or a computer and a telephone in an employee's office we find that not only do they like the workplace but there is a certain element of family that starts to build again. But we cannot even write off our home offices. The IRS will not let us do that, and I think that we should take a look at that because it not only has an impact on what it does to a small business, it also has an impact on the employees as they work in metropolitan areas and have to make that commute.

Now Recommendation 63 dealing with the Superfund. They all said, do something with the Superfund to reform that law. Either repeal or reform the retroactive liability in it. But that is something that the White House has been opposed to and has stonewalled ever since this Congress started in 1994.

Recommendation 87 supports the creation of medical savings accounts. We are hearing that from our small business people; to get self-sufficient. Let us take care of it, and provide some things for our employees and, of course, for ourselves. Even the deduction of

the premiums that should be afforded to a self-employed person that basically maybe is a one or a two-man office.

Recommendation 164, which recommends the complete repealing of the Davis-Bacon Act. I do not think that is going to happen, but I think there has to be some area of reform.

I could keep on going, Mr. Chairman, but we know the recommendations that came out of that conference. I was a member of a White House Small Business Conference several years ago and all the recommendations that we made at that time, even under a different Administration, seem to go unheard, just unheeded, and little or no action is taken. I think it is time that this Government becomes more responsive to those areas and we do something about it.

Other than that, everything is fine. I just ask permission that my full statement could be made part of the record.

Chairman BOND. It will be made a part of the record, Senator Burns.

Senator BURNS. Thank you.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF SENATOR CONRAD BURNS
SENATE COMMITTEE ON SMALL BUSINESS
JUNE 5, 1996

Mr. Chairman, I appreciate you holding this hearing today. Since the SBA is the Administration's link to small businesses, I think it is only right that we take a chance to review what they are doing for the small businesses across the country.

Last year we had small businesses descend on Washington DC to recommend policy actions that should be taken to help small businesses. And since 98% of Montana is small business, I take these recommendations seriously. And yet, we can't seem to get some of them moving.

Let me just highlight a few of the recommendations made by the White House Conference on Small Business:

* Recommendation #34 -- the Home Office Deduction which would allow small business folks to deduct the expense of their home offices. This would allow them to work out of the home, save energy costs commuting, and promote the new workplace with all our new technology.

* Recommendation #63 -- dealing with Superfund, recommending repeal of retroactive liability -- something the White House has opposed. While I may have concerns about how to pay for retroactive repeal, I think their recommendations deserve to be on the table.

* Recommendation #87 supports creation of medical savings accounts. We all know that is what is holding up the health insurance reform bill that passed the Senate 100-0.

* Recommendation #164 recommends repealing Davis-Bacon and I don't think I need to elaborate on that.

I could keep going but my point, Mr. Chairman, is that these recommendations were among the 60 recommendations put forth (out of hundreds discussed) as most important to our country's small businesses. And yet, the White House and the SBA have either remained silent or have actively opposed these recommendations.

We all know that this is Small Business Week and we had a wonderful opportunity yesterday to meet with the State Small Business Persons of the Year. Skip Hanson of Hanson Trucking was here from Columbia Falls, Montana. And I know that, even though he was here to be honored, he is also concerned about the impact of pending legislation on small businesses in Montana.

The increase of minimum wage is an issue important to small business and yet the SBA's response has me puzzled. In a May 9th letter to you, Mr. Chairman, Jere Glover states that the actual impact of the minimum wage increase on small business is not dramatic and that small business owners have not been particularly vocal on this issue. He followed that up with a letter on May 24th stating that the minimum wage increase would only directly impact about 10% of small businesses.

If the SBA honestly believes that, I would say their Office of Advocacy is seriously out of touch with those they are here to serve. I would invite them to spend a day in my office -- talking to the small business owners who take the time to come to DC because of the huge impact an increase in minimum wage would have on their business, answering the calls from folks who give actual numbers of what an increase would mean to them and to their employees.

Let me give you an example. Theater owners from Polson, Montana, came to see me less than a month ago. They have 85 employees. Most are students, some only work after school, some only during school breaks, some are spouses trying to earn some extra money -- and yes, most start off at minimum wage. As they build seniority, take on new skills and duties, those wages are increased. They said it is rare to keep someone at the starting wage for very long.

But if the minimum wage is increased, they will have to cut back on the number of employees. And they will be less likely to hire students, aiming instead for a workforce that is already trained. The impact on our economy will be huge. And the impact to our young people will be even more apparent. Where will they get their chance to learn good work ethics? Where will they develop skills they can't possibly learn in school?

These theater owners will not only stop hiring unskilled workers, they will be letting workers go. And they are not the only small business owners I've heard from! That's the standard response from fast food chains and from businesses up and down Main Street, America.

I am just real concerned, Mr. Chairman, about the lack of support our small businesses have received from Washington, DC. As much as we try to get legislation passed to simplify their lives, to promote new job creation, to strengthen small businesses, we are met with opposition or a deaf ear.

I am very hopeful that the SBA's agenda for 1997 will focus on the agenda that was set by small businesses at the much heralded White House Conference on Small Business in 1995. I think that the best thing we can give small businesses during this Small Business Week, is the promise of action on their recommendations.

Thank you again for calling this hearing, Mr. Chairman. You have been a true leader in paperwork reduction and in regulatory reform -- vital to small businesses -- and I look forward to working with you to implement more pro-small business policies.

Chairman BOND. The job of this Committee, I believe, is to pursue these recommendations and to see that they do not fall off the radar screen. That is what we have been about. That is what we are about today and that is what we will continue to be about.

Senator Frist, do you have an opening statement?

Senator FRIST. Thank you, Mr. Chairman. I would just ask unanimous consent that my opening statement be placed in the record.

Chairman BOND. It will be made a part of the record.

[The prepared statement of Senator Frist follows:]

PREPARED STATEMENT OF SENATOR BILL FRIST
BEFORE THE SENATE COMMITTEE ON SMALL BUSINESS
JUNE 5, 1996

Before I begin, I would like to thank the Chairman for holding this important hearing during Small Business Week. I also want to thank our witnesses for appearing today and helping us evaluate our progress in implementing the legislative agenda of American entrepreneurs.

My home state of Tennessee has more than 91,000 small businesses, representing more than 97 percent of the total business population. These small businesses employ nearly 50 percent of Tennessee's private workforce. Across the nation, I believe other states have similar small business profiles. As both a Tennessean and a United States Senator, it is critical for me to pay attention to the needs of small business owners.

One year ago this month, thousands of small business owners from across the country gathered in Washington for the White House Conference on Small Business. After months of preparation and several days of intense debate, these entrepreneurs made 60 recommendations to Congress and the President to strengthen small business and our economy. As elected representatives, we must strive to make their recommendations a reality -- launching a new era of unprecedented job creation, growth, and prosperity for American free enterprise.

However, as I look back over the last year, I see mixed results. We have taken steps in the right direction, but we still have a long way to go. Congress has moved forward on many of the Conference recommendations -- from regulatory relief to tax cuts to legal reform. But many of our witnesses will point out today that much of the legislative action inside the Beltway is not reaching the small business owner on Main Street.

Paperwork reduction and regulatory relief are good examples. My friend Ron Coleman, a small auto parts manufacturer in Memphis, told me once: "Government regulation is the most time-consuming aspect of my business. We must deal with the same rules and regulations as large businesses, only we are unable to call the human resource director, the vice president of government affairs, or the corporate legal department for help." We passed the Paperwork Reduction Act early last year to help entrepreneurs like Ron, but, according to the independent General Accounting Office (GAO), the Administration will fail to meet the law's goal of reducing government paperwork burdens by 10 percent a year. With all the paper generated by *Congressional Record* speeches and agency memorandums, I remain concerned that Ron does not yet perceive a reduction in his government paperwork burden.

In a similar situation, we passed the Small Business Regulatory Relief bill with the unanimous bipartisan support of the Senate. When that law takes effect at the end of this month, I am concerned that agencies may not be ready to implement its reform provisions. On other issues -- such as tax relief and legal reform -- we cannot even get legislation beyond the President's desk.

I raise these concerns simply to point out that we cannot rest in our pursuit of a small-business friendly government and a prosperous entrepreneurial economy. I encourage my colleagues to remember two things when they come to work in the Senate each day. First, remember the importance of small business owners to your home state economy. Second, remember the "Ron Coleman" from your home state who keeps your economy moving despite the heavy hand of the federal government. With these two images in our mind, I know we can move the small business agenda forward.

Senator FRIST. I do want to thank you for holding this important hearing during Small Business Week, and do want to thank our witnesses for coming today to evaluate our progress in implementing the legislative agenda of small business and really American entrepreneurs broadly. With that, we can proceed.

Chairman BOND. Thank you, Senator Frist. I join with you and on behalf of all the Members of the Committee we would like to welcome Mr. Michael Brostek, associate director, Federal Management and Workforce Issues of the General Government Division of the U.S. General Accounting Office. He is accompanied by Mr. Peter Guerrero, director of the Environmental Protections Issues Resources, Community and Economic Development Division of the U.S. General Accounting Office in Washington, D.C.

We did not have time to give your biographies along with the titles. The titles will have to suffice. Thank you for joining us.

Mr. Brostek.

STATEMENT OF MICHAEL BROSTEK, ASSOCIATE DIRECTOR, FEDERAL MANAGEMENT AND WORKFORCE ISSUES, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, WASHINGTON, D.C.; ACCOMPANIED BY PETER F. GUERRERO, DIRECTOR, ENVIRONMENTAL PROTECTION ISSUES RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, WASHINGTON, D.C.

Mr. BROSTEK. Thank you for having us. We will try to keep our statement short.

Good morning, Mr. Chairman, and Members of the Committee. We are pleased to be here this morning to discuss progress in implementing the Paperwork Reduction Act of 1995. With your permission, I ask that the full text of our testimony be inserted in the hearing record.

Chairman BOND. It will be made a part of the record in full. We appreciate your willingness to summarize it.

Mr. BROSTEK. Thank you, I will just briefly summarize the points.

As you know and as you stated in the opening of the hearing, the Paperwork Reduction Act requires OMB's Office of Information and Regulatory Affairs, or OIRA, to set a goal of at least a 10 percent reduction in Government-wide paperwork burden for fiscal year 1996 and goals for each agency to reduce their individual burden to the maximum practicable opportunity. To date, OIRA has not set the goals required by the Act. OIRA officials indicate that the goals will be set soon when OIRA releases its information resources management plan for the Federal Government.

Our graph displays these planned goals. As you can see, the total paperwork burden imposed by the Federal Government as of September 30, 1995 was approximately 6.9 billion hours. OIRA officials indicate that a Government-wide 10 percent reduction goal will be set. The lower dashed line is that goal. As you can see, that would reduce the paperwork burden to approximately 6.2 billion hours by the end of the fiscal year.

However, we see little, if any, likelihood that this reduction will actually be achieved. The goals of the individual agencies, which

are in fact the reductions that those agencies expect to achieve this year will average out to about a 1 percent Government-wide reduction in paperwork burden. This reduction is shown by the top dashed line on our graph.

Several agencies contend that their burden reduction efforts are hampered by statutorily based requirements. Most significantly, IRS says that it can only achieve about a .9 percent reduction in their burden this year because in officials' judgment nearly all of the agency's burden is necessary to implement the current tax laws. Because IRS' paperwork burden represents about 80 percent of the Federal Government's total burden a 10 percent Government-wide reduction cannot succeed unless IRS can reduce its burden by somewhere in the neighborhood of 10 percent.

In passing the Paperwork Act last year, Congress required that OIRA keep Congress and its committees fully and currently informed about the major activities related to implementing that Act. However, prior to this hearing OIRA had not informed Congress about why it had not yet set the goals required by the Act, and they also had not informed the Congress about why the agencies believe they are going to be unable to achieve the 10 percent Government-wide reduction that is sought.

Our first graph also illustrates an unusual increase in the Government's total estimated paperwork burden. The solid line on the graph shows the month-by-month paperwork burden totals for the Federal Government from March 1995, just prior to the passage of the Paperwork Act last year, to March of this year which was the most recent month in which data were available. As you can see from the solid line, the Government's total paperwork burden increased about 500 million hours, or about 8 percent in the month of September 1995. This increase came as agencies submitted numerous information collection requests to OIRA for approval before the new provisions of the Paperwork Act became effective on October 1 of last year.

Mr. Chairman, I will now turn briefly to the burden reduction efforts of EPA and OSHA. EPA has its own effort to reduce paperwork separate from but related to the Paperwork Act. In March 1995, the EPA administrator committed to reducing the agency's burden as measured on January 1, 1995, by about 25 percent, and to achieve that 25 percent reduction by June 1996, or by this month.

Initially, EPA estimated its January 1995 burden to be about 81 million hours which implied a reduction to about 61 million hours if the 25 percent reduction goal was achieved. However, last month EPA revised its baseline estimate for the burden that was realized in January 1995. That estimate is shown by the first bar in our graph and is now at about 101 million burden hours as opposed to the 81 million earlier estimate.

The second bar in our chart shows that this burden would be reduced to approximately 76 million burden hours if EPA's 25 percent reduction goal is actually met. Note however, from the date at the bottom of the bar that EPA has extended its deadline for achieving the goal to the end of this year rather than by the end of this month.

Finally, the third bar shows that despite EPA's efforts, the total burden imposed is expected to climb back to approximately 100 million hours by September. This offsetting increase, according to EPA officials, is attributable to the Paperwork Reduction Act's requirement that the burden hours associated with notifications to third parties be counted as part of the Government's total paperwork burden, and also to certain new information collections. For instance, new information collections are associated with the Clean Air Act Amendments of 1990 and the Residential Lead-Based Paint Hazard Reduction Act of 1992.

Turning to OSHA, the third agency that we studied, OSHA assumed that it would be seeking a 10 percent burden reduction as specified in the Paperwork Reduction Act. OSHA initially identified about an 8.7 million hour reduction that could be achieved by dropping a number of certification requirements that they then had. However, this spring OSHA officials told us that eliminating these certifications likely would not be done by the end of this fiscal year.

On the other hand, OSHA's overall burden is expected, according to OSHA officials, to drop by about 8 percent this year, or 17 million hours, because as of May of this year employers were no longer required to perform certain recordkeeping functions that are associated with OSHA's process safety standard.

Mr. Chairman, that concludes my statement. Mr. Guerrero and I would be happy to respond to any questions you or other Members of the Committee may have.

[The prepared statement of Mr. Brostek follows:]

United States General Accounting Office

GAO

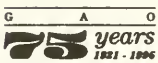
Testimony

Before the Committee on Small Business
U.S. Senate

PAPERWORK REDUCTION

Burden Reduction Goal Unlikely To Be Met

Michael Brostek
Associate Director, Federal Management and Workforce Issues
General Government Division
and
Peter F. Guerrero
Director, Environmental Protection Issues
Resources, Community and Economic Development Division



GAO/T-GGD/RCED-96-186

Statement

Paperwork Reduction: Burden Reduction Goal Unlikely to Be Met

Mr. Chairman and Members of the Committee:

We are pleased to be here today to discuss the implementation of the Paperwork Reduction Act of 1995. As you requested, we have reviewed selected aspects of the act's implementation by the Office of Management and Budget (OMB) and three agencies—the Internal Revenue Service (IRS), the Environmental Protection Agency (EPA), and the Occupational Safety and Health Administration (OSHA). In your request letter, you noted that participants at last year's White House Conference on Small Business believed these three agencies impose the most significant paperwork burdens on small businesses.

We will focus on three main issues today: (1) changes in paperwork burden governmentwide and in the three selected agencies, (2) OMB's responsibility to set goals for reducing such burden and whether agencies will achieve the burden reductions envisioned in the act, and (3) actions each of the three agencies have taken since the passage of the act. We will also discuss some measurement issues Congress needs to consider as it assesses agencies' progress in reducing paperwork burden.

Background

First, however, a little background information is needed. The Paperwork Reduction Act of 1995 amended and recodified the Paperwork Reduction Act of 1980, as amended. The 1995 act reaffirmed the principles of the original act and gave new responsibilities to OMB and executive branch agencies. Like the original statute, the 1995 act requires agencies to justify any collection of information from the public by establishing the need and intended use of the information, estimating the burden that the collection will impose on the respondents, and showing that the collection is the least burdensome way to gather the information.

The act also reauthorized the Office of Information and Regulatory Affairs (OIRA) within OMB to determine whether agencies' proposals for collecting information comply with the act.[1] Agencies must receive OIRA approval for each information collection request before it is implemented. OIRA is also required to report to Congress on agencies' progress in reducing paperwork. To do so, OIRA develops an Information Collection Budget (ICB) by gathering data from executive branch agencies on the total number of "burden hours" OIRA approved for collections of information for the agency

[1]The act requires the Director of OMB to delegate the authority to administer all functions under the act to the Administrator of OIRA, but does not relieve the OMB Director of responsibility for the administration of those functions. In this testimony, we refer to OIRA or the OIRA Administrator wherever the act assigns responsibilities to OMB or the Director.

at the end of the fiscal year, and agency estimates of the burden for the coming fiscal year.[2]

The 1995 act also makes several changes in federal paperwork reduction requirements. For example, it requires OIRA to set goals of at least a 10-percent burden reduction governmentwide for each of fiscal years 1996 and 1997, a 5-percent governmentwide burden reduction in each of the next 4 fiscal years, and annual agency goals that reduce burden to "the maximum practicable" extent.[3] The act also redefines a "collection of information" to include required disclosures of information to third parties and the public, effectively overturning the Supreme Court's 1990 Dole v. United Steelworkers of America decision.[4] Finally, the 1995 act details new agency responsibilities for the review and control of paperwork. For example, it requires agencies to establish a 60-day public notice and comment period for each proposed collection of information before submitting the proposal to OMB for approval.

OIRA uses the ICB information to assess whether agencies' burden reduction goals are being met. OIRA classifies changes in burden-hour estimates as caused by either "program changes" or "adjustments." Program changes are additions or reductions to existing paperwork requirements which are imposed either through new statutory requirements or an agency's own initiative. Adjustments are changes in burden estimates caused by factors other than changes in the actual paperwork requirements, such as changes in the population responding to a requirement or agency reestimates of the burden associated with a collection of information. OIRA counts both program changes and adjustments when calculating an agency's burden-hour baseline at the end of each fiscal year. However, OIRA does not count changes that are due to adjustments in determining whether an agency has achieved its burden reduction goal.

[2]Although OIRA consults with agencies in the preparation of their ICB submissions and refers to this data collection process as a "budget," OIRA's information collection budget does not limit the number of burden hours an agency is permitted to impose in the way that a financial budget limits expenditures.

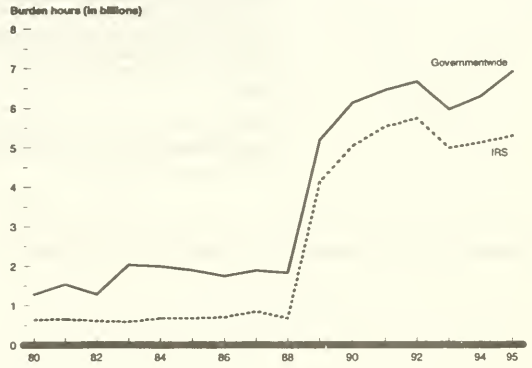
[3]The original act contained burden reduction goals, but they had expired.

[4]494 U.S. 26. The Court ruled that the Paperwork Reduction Act of 1980 (as amended) did not provide OMB with the authority to review agency regulations that mandate disclosure of information by regulated entities directly to third parties.

Changes in Paperwork Burden Over Time

Figure 1 shows changes in reported burden-hour estimates governmentwide and at IRS between September 30, 1980, and September 30, 1995—the day before the new act took effect.

Figure 1: Trends in Paperwork Burden Governmentwide and for IRS



Note: Data are as of September 30 each year.

Source: Regulatory Information Service Center and Department of the Treasury

As you can see, the governmentwide total rose substantially during that 15-year period, from about 1.5 billion burden hours in 1980 to more than 6.9 billion burden hours in 1995. The rate of governmentwide increase was not consistent during this period; the total rose and fell in the early years,

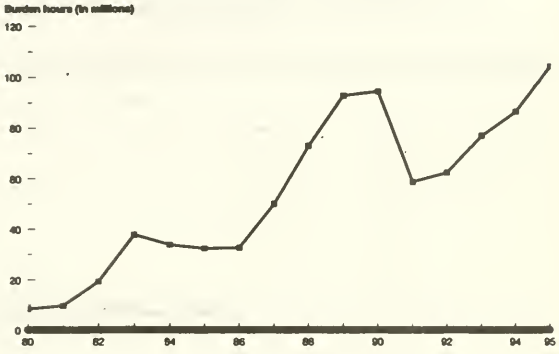
rose dramatically in 1989, and rose every year since then with the exception of 1993.[5] In each year since fiscal year 1989, IRS' paperwork burden has accounted for more than three-quarters of the governmentwide total. Increases or decreases in IRS' total number of burden hours have had a dramatic effect on the governmentwide total. For example, the near tripling of the governmentwide burden-hour estimate during fiscal year 1989 was primarily because IRS changed the way it calculated its information collection burden, which increased its paperwork estimate by about 3.4 billion hours.[6] Because the IRS paperwork burden is such a large portion of the governmentwide total, the success of any governmentwide effort to reduce burden largely depends on reducing the burden imposed by IRS.

Figures 2 and 3 show the changes in the paperwork burden at EPA and OSHA, respectively, during the same 1980 to 1995 period.

[5]According to OMB, more than 90 percent of the fiscal year 1993 decline was because of population changes and other adjustments.

[6]For more information on this recalculation, see Paperwork Reduction: Reported Burden Hour Increases Reflect New Estimates, Not Actual Change (GAO/PEMD-94-3, Dec. 6, 1993).

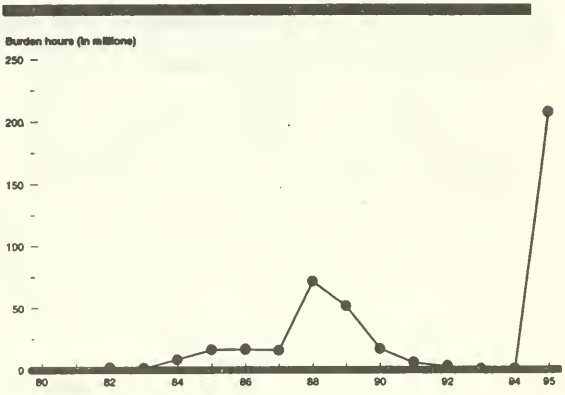
Figure 2: Trends in EPA's Paperwork Burden



Note: Data are as of September 30 each year.

Source: Regulatory Information Service Center.

Figure 3: Trends in OSHA's Paperwork Burden



Note: Data are as of September 30 each year, but data were not available for 1980 and 1981. In 1982, 1983, 1993, and 1994, OSHA's paperwork estimate was less than 2 million burden hours.

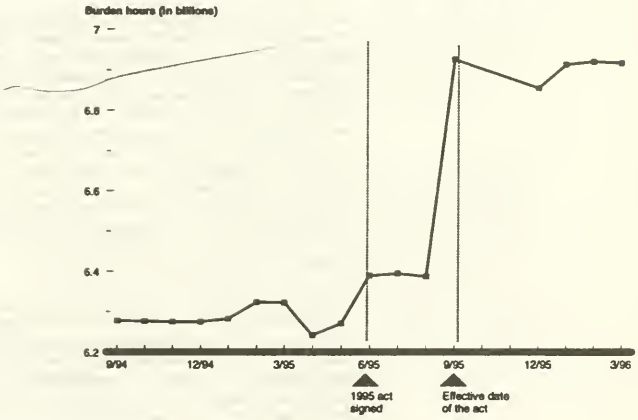
Source: Department of Labor

EPA's burden-hour estimate rose sharply in the late 1980s, fell somewhat in 1991 (because third-party information collections were no longer being counted as a result of the Dole decision), and rose again between 1991 and 1995. OSHA's burden-hour estimate increased gradually through 1987, rose rapidly in 1988, fell back to its previous level by 1990, and decreased slightly until it rose sharply between 1994 and 1995.[7]

[7]The increase in 1988 resulted from a court-ordered expansion of the scope of industries covered by the agency's Hazard Communication Standard. The burden level decreased by 1990 as industries made use of a guide OSHA published to simplify compliance with that standard.

Figure 4 shows the month-by-month changes in the governmentwide paperwork burden between September 30, 1994, and March 30, 1996—the period including the date the 1995 act was signed by the President (May 22, 1995) and its effective date (October 1, 1995).

Figure 4: Recent Changes in Burden Hours Governmentwide



Note: Data are as of the end of each month.

Source: Regulatory Information Service Center.

The number of burden hours governmentwide rose more than 500 million hours (more than 8 percent) in the 1-month period immediately before the effective date of the act—from 6.39 billion hours on August 30, 1995, to

6.90 billion hours on September 30, 1995. IRS increased its burden-hour estimate by more than 147.6 million burden hours (about 3 percent) between August and September; EPA's estimate went up more than 21 million hours (more than 25 percent) during that month. OSHA's burden-hour estimate rose most dramatically shortly before the effective date, from about 1.5 million hours on June 30, 1995, to about 208 million hours on September 30, 1995.[8]

Documents we reviewed and officials we talked to indicated that these increases occurred during this period because agencies were trying to get proposed information collections approved before the new act took effect on October 1, 1995.[9] Some of the proposals at OSHA and EPA were third-party and public disclosures that had previously been removed from the agencies' estimates because of the Dole decision.[10] Other proposals, particularly those at OSHA, were third-party and public disclosures that had been added after the Dole decision.[11] By getting these third-party and other proposed information collections approved before the act's effective date, agencies were able to avoid the new requirements imposed by the act, including the 60-day public notice and comment period at the agencies. OIRA approved some of these collections of information for less than 1 year so that the agencies would have to clear the collections under the new process during fiscal year 1996.

However, submitting the proposals for review and approval before the act took effect also raised the burden-hour baseline against which the agencies' paperwork reduction goals would be judged. For example, the increase in OSHA's burden-hour baseline from about 1.5 million hours to about 208 million hours between June and September 1995 meant that OSHA had to cut more burden hours to achieve a 10 percent reduction (20.8 million hours) than it would have had to cut before the increase (about 150,000 hours).

[8]OSHA burden-hour estimates were unavailable for July or August 1995.

[9]For example, on May 22, 1995, the OIRA Administrator sent a memorandum to the heads of executive branch departments and agencies reminding them that, for information collections to be approved by OIRA on or after October 1, 1995, they would have to comply with the new procedures specified in the act.

[10]The burden-hour increases at IRS were not attributable to the reinstitution of third-party information collections because IRS never stopped counting them.

[11]For example, OSHA's Process Safety Management of Highly Hazardous Chemicals Standard (about 135 million burden hours) was added after the Dole decision.

Burden Reduction Goals Not Set and Reductions Likely to Fall Short of Act's Target

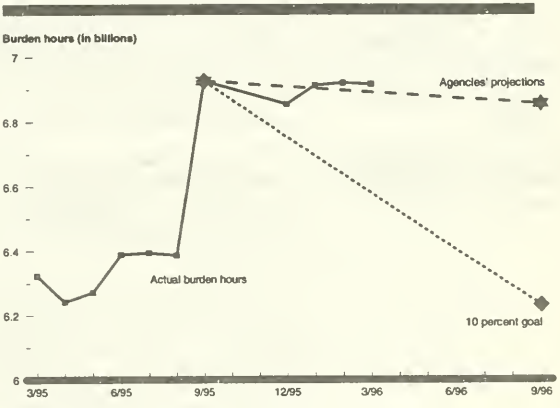
One of the key features of the Paperwork Reduction Act of 1995 is the requirement that OIRA set both governmentwide and agency-specific burden reduction goals for fiscal year 1996 and for the next 5 fiscal years. However, as of May 31, 1996, OIRA had not set any such goals. More importantly, information that the agencies submitted to OIRA indicated that the burden reduction target that the act specified for fiscal year 1996 is unlikely to be reached.

Agencies' Planned Burden Reduction Goals Will Average 1 Percent

OIRA staff told us that they plan to set the fiscal year 1996 burden reduction goals in a soon-to-be-published ICB. As part of the ICB development process, in September 1995, OIRA asked agencies to project what their burden-hour levels would be at the end of fiscal year 1996. Agencies submitted that information to OIRA between December 1995 and February 1996.

OIRA staff said that they will establish a governmentwide burden reduction goal of 10 percent for fiscal year 1996, as the act requires. They also said that agency goals will reflect the end-of-fiscal year 1996 burden-hour estimates that the agencies provided in their ICB submissions unless changed as a result of OIRA review. According to unpublished information we obtained from OIRA and the agencies, the weighted average of the agencies' burden reduction projections is about 1 percent. If these projections are accurate, the fiscal year 1996 goal of a 10-percent reduction in governmentwide paperwork burden that the 1995 act calls for will not be accomplished. Figure 5 shows the actual month-to-month governmentwide paperwork estimates from March 1995 to March 1996 and, according to our calculations, what the number of burden hours would have been by the end of fiscal year 1996 if the 10-percent burden reduction goal had been achieved and what the burden-hour total is expected to be on the basis of agencies' projections.

Figure 5: Governmentwide Trends in Paperwork Burden and Fiscal Year 1996 Goals for Burden Reduction



Note. Data are as of the end of each month

Source. Regulatory Information Service Center, ICB submissions, and GAO calculations.

The act did not explicitly require that the governmentwide goal should be the sum of the agency-specific goals. It specifies that the governmentwide burden-reduction goal for fiscal year 1996 should be at least 10 percent and that the individual agencies' goals should reduce information collection burdens to the "maximum practicable opportunity" in each agency. Therefore, if the OIRA Administrator determines that federal agencies are only capable of collectively reducing their paperwork burden by an average of about 1 percent, she is authorized to set agencies' goals

that will not add up to the governmentwide goal of a 10-percent reduction in burden.

Nevertheless, it is logical to assume that agency-specific goals would be the means by which the governmentwide goal would be achieved. Also, the 1995 act's legislative history indicates that Congress contemplated a connection between the governmentwide and agency-specific goals. For example, the act's conference report states that

> "individual agency goals negotiated with OIRA may differ depending on the agency's potential to reduce the paperwork burden such agency imposes on the public. Goals negotiated with some agencies may substantially exceed the Government-wide goal, while those negotiated with other agencies may be substantially less."

OIRA Did Not Keep Congress Informed

In addition to setting goals for paperwork reduction, the act requires OIRA to "keep the Congress and congressional committees fully and currently informed of the major activities under this chapter." However, as of May 31, 1996, the OIRA Administrator had not informed Congress or congressional committees (1) about why OIRA has not established any burden reduction goals to date and (2) that agency projections OIRA received at least 3 months ago indicated that the 10 percent governmentwide paperwork reduction goal called for in the act would not be achieved. Both of these issues appear to us to be "major activities" subject to the act's requirement that the OIRA Administrator keep Congress fully and currently informed.

Agencies Contend Statutory Requirements Impede Burden Reduction

Information collection is one method by which agencies carry out their missions, and those missions are established by Congress through legislation. For the past several years, the ICBs have indicated that agencies' burden-hour estimates increased because of congressionally imposed statutory requirements. For example, the fiscal year 1993 ICB noted that title IV of the Clean Air Act Amendments of 1990 established new permitting requirements for emission sources that produce nitrous oxides, resulting in a 1.8 million hour increase to EPA's burden-hour estimate. As a result of such requirements, some agencies contend that they are limited in the amount to which they can reduce their paperwork burden. If agencies' paperwork requirements are truly statutorily mandated, those agencies may not be able to reduce their burden-hour estimates by the amounts envisioned in the 1995 act without changes in the legislation underlying those requirements.

However, neither we nor OIRA have assessed the extent to which the paperwork burden agencies impose is directly a consequence of statutory requirements and, therefore, is out of agencies' control. Even though a statute may require an agency to take certain actions, the agency may have discretion regarding whether paperwork requirements need to be imposed and, if so, the manner or frequency with which the information is collected. For example, although several statutes require employers to provide training to employees, OSHA may have discretion to determine whether employers need to submit paperwork to demonstrate their compliance with these provisions.

EPA, IRS, and OSHA Burden Reduction Targets and Actions Differ

As a part of their ICB submissions to OIRA, EPA, IRS, and OSHA each projected what it believed its total number of burden-hours would be as of September 30, 1996. Each agency also took different steps to reduce its paperwork burden.

Environmental Protection Agency

EPA has its own effort to reduce paperwork that began before the Paperwork Reduction Act of 1995 took effect. EPA has set an internal burden-reduction target and expects to reach that target by the end of this year. Despite these efforts, EPA reported that their burden-hour reductions will be largely offset by increases in statutorily-based information collections.

In March 1995, the EPA Administrator committed to reducing the agency's January 1, 1995, estimated paperwork burden by 25 percent by June 1996. Initially, EPA estimated that its January 1995 baseline was about 81 million burden hours, so a 25-percent reduction would bring the agency's total to about 61 million hours. In March of this year, we provided a statement for the record to the House Committee on Small Business indicating that, despite these planned reductions, EPA projected that its burden-hour total would increase to about 117 million hours by September 30, 1996—an increase of about 44 percent from EPA's January 1995 baseline.[12]

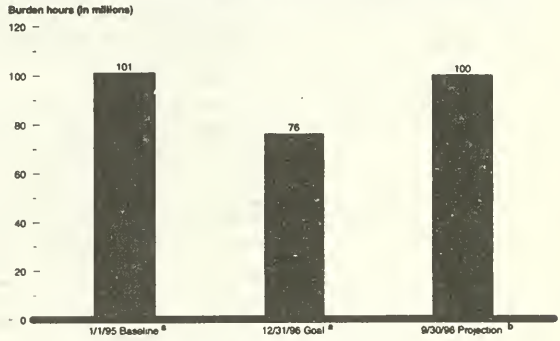
However, in May 1996, EPA revised its baseline estimate from about 81 million burden hours to about 101 million hours. EPA retained its goal of reducing paperwork by 25 percent, making its revised burden-hour target about 76 million hours. EPA also said its burden-reduction effort would not be completed until December 31, 1996, and revised its burden-hour

[12]Environmental Protection: Assessing EPA's Progress in Paperwork Reduction (GAO/T-RCED-96-107, Mar. 21, 1996).

projection for September 30, 1996, from 117 million hours to about 100 million hours. EPA officials said their projection was revised because some planned information collections would not be approved by OIRA by the end of the fiscal year and because their original estimate did not include all of the burden-hour reductions that EPA now expects to make by the end of the fiscal year.

Using EPA's most recent estimates, figure 6 shows EPA's burden-hour baseline as of January 1, 1996, the 25-percent reduction goal that EPA expects to accomplish by December 31, 1996, and the total number of burden hours that EPA currently projects will be in place as of September 30, 1996. As you can see, despite EPA's burden-reduction efforts during this period, EPA's burden-hour estimate at the end of this fiscal year is expected to be about what it was at the start of those efforts. This is because, at the same time EPA has been reducing its January 1995 paperwork inventory, new burden hours have been added to that inventory. According to EPA, those additions are primarily third-party burden hours that are now being counted as a result of the Paperwork Reduction Act of 1995 and new information collections associated with the Clean Air Act Amendments of 1990 and the Residential Lead-Based Paint Hazard Reduction Act of 1992.

Figure 6: EPA Burden-Hour Estimates



a Does not include about 9 million hours of third party burden.
b Does not include about 5 million hours of TRI burden.

Source: EPA

It is also important to point out that the burden-hour totals in figure 6 do not include some types of paperwork that were being imposed on the public. For example, the first two bars do not include about 9 million hours of third-party disclosures and the last bar does not include about

5 million hours of burden associated with the Toxic Release Inventory (TRI).[13]

Although EPA's efforts to reduce burden hours have been almost totally offset by new information collection requirements, EPA's attempt to reduce its paperwork burden may prevent what would otherwise be a significant increase in the agency's paperwork burden. As of May 1996, EPA said that it had completed reductions of about 15 million hours and had identified about 8 million more hours of burden for elimination. If these figures are accurate, EPA would need to eliminate the 8 million burden hours it had identified and identify and eliminate about 2 million more hours to reach its goal of reducing its 101 million burden-hour baseline by 25 percent. Without the burden-hour reductions EPA says it has accomplished or has in progress, the agency's paperwork burden could have increased by 25 percent by the end of the year.

Although EPA's initiative to reduce the burden it imposes is promising, its burden-reduction claims warrant continued scrutiny. As we reported in our March 1996 statement for the record to the House Small Business Committee, some of EPA's February 1996 burden reduction estimates were overstated. For example,

- EPA initially claimed that a recently adopted TRI reporting option reduced the burden associated with TRI by about 1.2 million hours. However, EPA did not offset this reduction by the additional paperwork burden it created—about 800,000 hours—that would be incurred by those choosing this option. Therefore, the real burden reduction was about 400,000 hours.
- EPA estimated that it had reduced the burden associated with its land disposal restrictions program by 1.6 million hours, but its January 1, 1995, baseline indicated that the entire program only accounted for about 800,000 hours.

As we observed in our previous testimony on this issue, EPA has changed the way that it counts its burden reductions to more accurately reflect the effects of the agency's actions. This was one factor that caused the agency

[13]Third-party information is not included in EPA's January 1, 1996, baseline because the baseline was established before the Dole decision was overturned by the Paperwork Reduction Act of 1995. Although EPA's baseline included burden hours associated with TRI, its burden-hour projections for OIRA do not include all of the burden associated with TRI. TRI estimates were removed from burden-hour totals submitted to OIRA in 1993 because the form used to collect TRI information was no longer submitted to OIRA for clearance. In EPA's appropriation for fiscal year 1993, Congress exempted the TRI Form R from the requirements of the Paperwork Reduction Act until EPA promulgates a revision to the form. Since then, EPA has not submitted a revised form to OIRA for clearance.

to revise its January 1, 1995, baseline from which the burden-hour reductions are being taken.

Internal Revenue Service

Reducing burden on the taxpayer is one of the primary goals in IRS's Business Master Plan, in which the agency identifies a number of burden-reduction actions that it plans to take. In its ICB submission, IRS said that it plans to reduce its measured paperwork burden by about 50 million hours (0.9 percent) during fiscal year 1996 by simplifying forms and instructions, changing reporting thresholds, and moving eligible taxpayers to "E-Z" versions of required forms.

IRS officials said they are limited in the amount to which they can reduce the agency's paperwork burden because most of IRS' information collections are statutorily mandated in the tax code. They said that unless changes are made to the substantive requirements in the code, IRS will not be able to substantially reduce its paperwork burden.

IRS officials also said that significant portions of the agency's efforts to reduce its burden focus on types of burden that are not covered by the Paperwork Reduction Act. For example, they said that a major part of the real paperwork burden on the taxpayer comes from responding to IRS notices, and IRS has a major initiative under way to determine which notices can be eliminated, combined, or simplified. However, they said that notices are not covered by the act because they focus on information collected from a single individual in the course of an investigation or inquiry.

Occupational Safety and Health Administration

OSHA officials said that they assumed their agency would be responsible for reducing its burden by 10 percent during fiscal year 1996 as its share of the governmentwide goal. In its 1995 ICB submission to the Department of Labor, OSHA said that it would reduce its fiscal year 1995 paperwork burden by 8.7 million hours (about 4 percent) during fiscal year 1996 by dropping a number of certification requirements.[14] Although OSHA has begun the process of eliminating these certification requirements, in the spring of 1996 OSHA officials told us that the process may not be completed in time to eliminate the requirements by the end of the fiscal year.

[14]Certifications are prepared in response to regulatory provisions requiring employers to conduct tests, inspections, maintenance checks, or training and to prepare and keep on file a signed record indicating what was done and the date the action was taken.

After submission of its ICB, OSHA officials discovered that they could claim additional burden reductions. OSHA's Process Safety Management of Highly Hazardous Chemicals Standard is a third-party information collection that the agency added to its burden-hour total in August 1995. At that time, OSHA officials estimated the paperwork requirements associated with the standard at 135 million burden hours. In keeping with a schedule established by the standard when it was issued in 1992, the burden imposed on employers declined in May 1996 because they were no longer required to perform certain recordkeeping functions after that date. OSHA officials said that they initially considered the decline in employer responsibilities an adjustment, which could not be counted toward the agency's 10 percent burden reduction goal in their ICB submission. However, they said the Department of Labor paperwork clearance official told them the change should be considered a program change, and therefore should be counted as part of OSHA's paperwork reduction effort. Consequently, OSHA reduced its 135 million burden-hour estimate by 17 million hours—8 percent of OSHA's total fiscal year 1995 burden.

Measurement Issues

As Congress exercises oversight in this area, it is important that it keep in mind several measurement issues. As noted previously, OIRA does not count any adjustments (because of reestimates or population changes) that agencies submit with their information collection requests in determining whether an agency has met its paperwork burden reduction goals. Therefore, an agency that initially submits a high estimate and later revises it downward does not get credit from OIRA for the reduction. Conversely, if an agency initially submits a low paperwork estimate and later increases the estimate, OIRA never counts the increase against the agency for goal attainment purposes. In fact, the governmentwide increase of about 1 billion burden hours between 1990 and 1995 was primarily driven by adjustments that never counted against agencies' goals. OIRA staff told us they were not aware of any evidence that agencies were systematically underestimating the burden associated with their information collections and then revising them upward.

It is also important that Congress recognize the difference between the government's "measured" paperwork burden that is reflected by the number of burden hours an agency reports and the "real" burden that is felt by the public and others. For example, the public did not feel the 3.4 billion burden-hour increase caused by IRS' 1989 reestimate; the burden had been there all along, and IRS simply improved its method for gauging that burden. This example underscores the care that must be taken in

interpreting the official burden-hour statistics. Most or all of the burden-hour increase may have actually existed since 1980 when the original Paperwork Reduction Act became effective. If this were the case, the statistics available to policymakers would seriously underestimate the burden actually imposed on the public, and figure 1 would overstate the degree to which paperwork burden actually increased since 1980.

The increase in measured burden as a consequence of the inclusion of third-party and public disclosures in September 1995 was similar to the IRS reestimate; the burden already existed but had just not been previously measured. Likewise, the burden felt by the public does not diminish when an agency recalculates a lower estimate of its paperwork burden without eliminating any existing requirements.

Relatedly, it is important that Congress be aware that certain elements of agencies' information collection burden are not reflected in some burden-hour estimates. As we mentioned earlier, OIRA does not count about 5 million hours of paperwork burden associated with EPA's TRI reporting form because the form is not submitted for OIRA approval. IRS's burden-hour estimates do not include such information collections as notices involving errors, nonfilings, and delinquencies because they are exempted from coverage under the act.

Finally, as we have said in previous reports and testimonies, users of paperwork burden-hour estimates should proceed with great caution. The degree to which such estimates reflect real burden and the factors that cause changes to the burden-hour totals are often unclear. Nevertheless, they are the best indicators of paperwork burden available, and we believe that they can be useful as long as their limitations are borne in mind.

Mr. Chairman, this completes our prepared statement. We would be pleased to answer any questions.

Chairman BOND. Thank you very much, Mr. Brostek. You testified that while OMB is going to establish an overall paperwork reduction goal of 10 percent as required by law, the actual agency-specific goals total around 1 percent. How did you come to that conclusion?

Mr. BROSTEK. This conclusion is based on information that we obtained from OIRA. The goals for the individual agencies are projections of what they expect the burden to be at the end of this fiscal year, September 30, 1996. According to OIRA officials, those projections of what their burden will be, when averaged across all agencies total to about a 1 percent reduction from what the baseline was as of September 1995.

Chairman BOND. Did OMB explain to you how they ever intended to reach a Government-wide goal of 10 percent reduction if the goals for each agency only add up to 1 percent?

Mr. BROSTEK. The officials at OIRA explained that under the provisions of the law they do not believe that the individual goals have to add up to the 10 percent reduction. They also refer to the provision in the law that indicates that the individual agency's reductions should be set to the maximum practicable opportunity. If the maximum opportunity is less than 10 percent, that is an allowable result under the law. Thus, the agencies have come in with what should be their maximum practical reduction and those total up to less than the 10 percent Government-wide goal.

Chairman BOND. So after we passed, everybody voted for it and it was signed into law, 10 percent reduction, OMB has just decided that that is not practical; is that—in essence, they have decided that this lofty goal that everybody held out for agency paperwork reduction just could not be done so I guess we ought not to worry about it?

Mr. BROSTEK. I am not sure that that would be the conclusion that OIRA would have. What they have concluded and the agencies individually have concluded and reported to OIRA is that they do not believe that they can reduce their burden by the full 10 percent this year. Generally, that is because the agencies believe that their paperwork requirements are tightly tied to implementing the underlying statutes that they are responsible for. Their view is that they do not have sufficient discretion to reduce the paperwork burden and still properly implement their underlying statutes.

Chairman BOND. Does it seem to you that if they are not violating the letter of the law, maybe the spirit of the law is not being observed?

Mr. BROSTEK. Judging whether the spirit of the law is being observed is maybe more properly done by those who were intimately involved in its passage. What we have observed is that the officials at OIRA did not seem to engage in a meaningful negotiation with the agencies to determine what their reduction goal would be.

OIRA on an annual basis asks agencies to submit an estimate for what their paperwork burden reduction will be over the forthcoming year. That has been going on for some 15 years or so. In setting the goals, OIRA added to the memo that goes out a vague reference to the goal-setting process. It may be that some of the agencies did not perceive that they were really establishing a goal. They may

have just considered themselves as setting their normal estimate of what the reduction was going to be.

Chairman BOND. I was just going to ask, you mentioned negotiations; OIRA is supposed to negotiate. Did you see any evidence of negotiations?

Mr. BROSTEK. We did not do a thorough review of that, but from the anecdotal evidence we have, no, we did not observe OIRA coming back to the agencies and questioning or challenging the agencies to achieve a greater reduction than what they initially asserted they could achieve.

Chairman BOND. You noted that OMB failed to keep Congress and the Committees fully informed. We are now 9 months into the first year of implementation. What kind of information does GAO think that OIRA and OMB should be providing Congress now and in the future?

Mr. BROSTEK. Certainly, OIRA would need to get their annual report up to you. They are late in doing that. That report would provide some information that could be useful to you. The most useful information for you would be something that gets behind the assertion of the agencies that they are really restricted by the underlying statutes and cannot achieve the reduction that is being sought.

Chairman BOND. Should they not come forward with recommendations on how statutory changes could facilitate the achieving of that goal? Would that not be a reasonable thing——

Mr. BROSTEK. I think that is within the charter of the organization. They could do that, yes.

Chairman BOND. Thank you very much. I see my time is up so I will turn now to Senator Burns.

Senator BURNS. I have no questions.

Chairman BOND. Senator Frist.

Senator FRIST. On this figure, Figure 5, could you go through one more time? This incremental increase in September, what explains that and was it legitimate? Then I will go from there, I guess.

Mr. BROSTEK. The increase in September is the cumulative approval of a number of information requests from agencies across the Federal Government. The administrator of OIRA sent out a memo in May of last year explaining that the Act had passed and that implementation was forthcoming, and in that memo made reference that if agencies would like to get their information collections approved before the provisions of the Act became effective they needed to get those requests into OIRA expeditiously so that OIRA could review them and complete the approval process.

So this is, in part, a reaction to that, to get information collections into OIRA, to get them approved before the Act became effective.

The entire increment there is a mixture of different things. Some of these are new information requests that came along perhaps implementing statutes or implementing changes that the agencies felt were necessary to improve their regulations. A fair portion of that increase is following the provisions of the Act itself that said that third-party notifications should be counted as part of the paperwork burden of the Federal Government. It is implementing that change in the law, in part, that accounts for that increase.

Senator FRIST. So there will not be another incremental increase or decrease? Once that is done, everybody agrees what the definition is, what should be included and what should not be included?

Mr. BROSTEK. There are always adjustments to these levels over time and there may be some that would still come in. But the significant increase to include most of the third-parties was probably included in that increment back in September.

Senator FRIST. I guess the flip side to that is that if they were all included it would be a nice way to reach that 10 percent goal, which comes back to the old baseline by saying, we really do not have to include those in our accounting. I just do not want that to be done.

On the EPA on the other graph, you said that the EPA claims will meet their goal of reducing paperwork burdens by 25 percent, yet EPA projections show paperwork burdens will increase 44 percent instead from 81 million burden hours in January 1995 to 117 million burden hours by the end of this year. The EPA backs up its claim by saying they needed to adjust their baselines. Do you believe those adjustments are warranted?

Mr. BROSTEK. I think Mr. Guerrero can probably respond best to that question.

Mr. GUERRERO. The changes that EPA made to their baseline were due to a number of factors. One major factor is an expectation that they would promulgate, that they would be able to issue certain rules by the end of this year. It turns out they are behind schedule with those rules so that burden is no longer in their projection for this year.

The issue of how you treat the TRI Form R, which is a rulemaking that has been underway for a number of years now, has been going slower than expected for the agency, and that also was not in that number. They had, in the 117 million estimate, anticipated that they would have that form out. It now turns out it will not be out. So you have a number of events occurring like that.

In addition, the agency found they were able to take credit for reductions that they were not planning to take credit for in this timeframe. It is a host of factors like that that account for the differences.

Senator FRIST. I guess a related question, this burden hour estimates and baselines, it reminds me of the budget discussion we were just going through, and how this looks to the small business owner, manager, operator out there. Is it more gimmickry? Basically, we want to see this reduction in paperwork, and when we see this huge incremental increase of more than 10 percent when we are trying to go back 10 percent, and you see these adjusting baselines, how is that small business owner going to interpret it? Is it more gimmickry? Is it more games? Basically, they just want to see a 10 percent reduction.

Mr. GUERRERO. In the case of EPA, what I would say is that the agency has made a good faith effort to reduce their paperwork burden by 25 percent. What is important to recognize here is in making that effort they take a snapshot of what that burden is at a given point in time. From that point forward the situation changes. There are laws that the Congress passed that necessitates the agency collect certain kinds of information and data to implement

those laws fully. So if you take a snapshot 6 months later, a year later, you will have still a different base to come off of.

When we looked at the snapshot that EPA took at the beginning of 1995 where they committed to taking a 25 percent reduction, they indeed are well along the way to reducing this roughly 26 million burden hours they committed to reducing. They have reduced about 15 million hours and they expect to get to the balance by the end of this year. So their expectations are—and I believe they testified several weeks ago—that they would meet those reductions.

Of course, since that snapshot was taken things have changed. They have substantial requirements under the Clean Air Act to implement. Eventually they will bring in this TRI revised reporting form. At the same time they are bringing in these requirements other requirements are being phased out. So it is a moving target. I think the answer to a small business person is that, yes, there are genuine, good faith efforts underway by agencies like EPA to reduce the burden. There are also other requirements that continue to add to that burden and it is important for the Congress to pay attention to those requirements.

Senator FRIST. Thank you, Mr. Chairman.

Chairman BOND. Thank you, Senator Frist.

Senator Coverdell.

Senator COVERDELL. Could I go back to the other chart? I apologize for being late. So that I understand it, the agency projection for the reduction is just above 6.8 billion?

Mr. BROSTEK. Yes, correct.

Senator COVERDELL. So we are not making much headway toward the 10 percent goal?

Mr. BROSTEK. Correct.

Senator COVERDELL. And if you made the 10 percent goal after the spike—I think what we would have had in mind is that it would have dropped below 6.2 billion. So we are going in the wrong direction.

Mr. BROSTEK. There is a slight amount of progress being made, I guess, according to that top line. The important thing to concentrate on here, I think, is that a significant reason why that top line cannot come down is the IRS explanation—remembering that IRS accounts for 80 percent of the total paperwork burden of the Federal Government—IRS's contention that they cannot reduce their overall level of burden significantly given the current tax law. They feel that a .9 percent reduction this year is all they can achieve and still properly implement the tax laws.

Senator COVERDELL. What was that figure, 80 percent?

Mr. BROSTEK. Eighty percent of the Government's paperwork burden for this year——

Senator COVERDELL. So 80 percent of that chart is IRS?

Mr. BROSTEK. Correct.

Senator COVERDELL. And they can only reduce it?

Mr. BROSTEK. By .9 percent, they say.

Senator COVERDELL. Under the current tax law.

Mr. BROSTEK. Yes.

Senator COVERDELL. There is sure an argument that would support the kinds of changes some people are talking about.

What do you find the general attitude as you deal with the—do you feel there is an appreciation among the agencies of the impact of this on our economy, on new jobs, on—I guess the last point I would make—the relationship between our Government and our people, the citizenry, the cynicism that has developed? Do you think there is a full appreciation of the scope of this problem—it is not just another exercise here—getting to the endemic, general nature of the relationship between Government and those it governs?

Mr. BROSTEK. I think generally with the emphasis that has been on this, the passage of the Act last year to reformulate some of the rules and things, that agency officials do understand the importance of the issue. I think that they have tried, within the scope of their inventiveness, to follow up and implement the law properly. Whether or not there is a greater range of discretion that could be exercised to make further reductions is not always clear.

EPA is an interesting example there. They have had, of course, these various paperwork requirements on the books for some time and yet they were able to make significant progress in the past year at trying to reduce those burdens. Something triggered their ability to perceive that a greater reduction was possible. In general, I think that is the continued pressure, both from those who are being regulated and from the Congress itself, that kind of removes an inhibition, maybe, on the agency's part and allows them to see that there are other opportunities for reducing the burden that is being imposed on the public.

Senator COVERDELL. From your review, do you agree with the assessment of IRS that the most that it could achieve is something less than a 1 percent reduction?

Mr. BROSTEK. Our review was not in depth enough to make that assessment.

Senator COVERDELL. A pretty modest effort.

Mr. BROSTEK. Nine-tenths percent is certainly a fai ways from the 10 percent goal that was being sought.

Senator COVERDELL. No further questions.

Chairman BOND. Thank you, Senator Coverdell.

Senator Frist's question sort of triggered an interesting analogy in my mind. If I went to my physician and he told me that I needed to lose 10 pounds to avoid a heart attack and I told him, beginning July 1 I will lose 10 pounds. And between now and July 1 I double up on desserts and seconds and put on about 9, 10, or 11 pounds, which I have done and could do easily, and then spend July, August, and September getting back down to my original weight. I could say, Dr. Frist, I have lost the 10 pounds but his scale would still say that I was 10 pounds overweight and I would still be at the same risk.

Is that not kind of what that spike shows after OIRA went out and said, give us all your regulations, let us get them all in a month before we start counting and we will give you a nice higher plateau to start from? I am concerned from a small business perspective that all of a sudden they see the paperwork burden shoot up, and then instead of getting a 10 percent reduction they are getting about a 1 percent reduction. Is my analogy reasonable?

Mr. BROSTEK. Your analogy holds to some extent. Certainly, the base did increase at that time. But following up on the analogy you had, I think that the response from the agencies would be, they did not voluntarily go out and eat those desserts and seconds. They were forced to eat those desserts and seconds. They would say that they had to implement the underlying statutes in many cases and that required that they had to levy some new paperwork burdens on the public in order to collect the information that is needed to properly assess whether the laws are being carried out.

Also note that a portion of that—we are not sure how much of it—is from the Paperwork Reduction Act itself, which expanded the definition of what paperwork burden is to include these third-party notifications.

Senator COVERDELL. Mr. Chairman, it does suggest we had better not pass any more paperwork reduction.

Chairman BOND. I think we might have to try a different approach. But no problem, I have lost hundreds of pounds, and I wonder if we are making progress.

Let me ask Mr. Guerrero, again following up on one of the questions that Senator Frist asked, talking about the 25 percent reduction in the requirements of the private sector. You testified that EPA was using a different baseline, a different reduction level target, a different completion target. Are we seeing two sets of books here on that EPA? Let us just focus on EPA. Are they coming up with one set of good news reductions and at the same time warning us—not warning us, but in effect saying that the bad news for small business is that the burdens are not going down?

Mr. GUERRERO. I think EPA is, again I will repeat this, I believe they are making a good faith effort. What appears to be two sets of books really is two different baselines made for different purposes. The baseline they picked in the beginning of 1995, the first line here which began, by the way, at 81 million burden hours and then was adjusted in response to some of our criticisms of their planned reductions: that they had overestimated some reductions and taken more credit than credit was due in some of the reductions.

That January 1995 baseline includes some information collections and not others. The baseline that they submit to OIRA includes some things and still not other things that are in their 1995 baseline. The reasons for that are things like third-party burden. The OIRA requirements changed and now, because of the Act EPA must report third-party burdens. When EPA did its initial baseline third-party burden was not in there.

On the other hand, because EPA has not yet gone to OMB for approval for the revised Form R, it is not in their OIRA baseline but it is in their 1995 baseline because they viewed it as a burden, a legitimate burden. So what you have are what I believe are good faith attempts by the agency to calculate as best they can at a given point in time what that burden is. Depending upon the definitions you use to take—depending upon the type of film you use, whether it was black-and-white film or color film, you are going to get a different photograph at a different point in time.

The numbers will be different because the situation is a constantly changing situation. If you use different assumptions you

will get different numbers, too. The numbers can be reconciled and basically I think the bottom line here is—if there is a point to be taken from all this—that it is very important for an agency like EPA to maintain its credibility in this area, to come up with a common set of numbers.

Chairman BOND. It is as if I stepped on the scales one time with a 5-pound weight in my back pocket and then weighed another time without the weight.

Mr. GUERRERO. That is right.

Chairman BOND. Somehow I would hope that we would be able, with your assistance and OIRA's assistance to come up with a standard so that we can see whether we are comparing similar standards, similar requirements over time.

Mr. GUERRERO. That is right. It is important to know whether that 5-pound weight is in your pocket or not in your pocket at the time you are putting yourself on the scale.

Chairman BOND. Let us either have it in at all times or not have it in.

Senator Burns.

Senator BURNS. Just on your weight problem, I think you ought to take the same attitude I do. I just maintain a normal weight which is 20 pounds overweight all the time.

[Laughter.]

Chairman BOND. Any further questions, Senator Burns?

Senator BURNS. No.

Chairman BOND. Senator Frist.

Senator FRIST. Just one final question. The intent of this legislation was clearly, from the small business perspective, to get the Federal Government and the legislation that we put forward which is interpreted by regulations as well as statute, to get the Federal Government out of the way as much as possible and still have the intent of whatever legislation that is out there. I understand a little better about the floating baseline. It makes a certain amount of sense. As things come through and we put new laws out there, the people who are interpreting those laws need to—it is going to be different month-to-month and year-to-year.

I guess my question for each of you, a final question, is the intent was to remove this burden on small business. That is the intent of paperwork reduction. It really symbolizes the excessive regulations, the fine detail that is required. Are we having any impact at all? Good faith, I have heard the word, efforts are being made. Our final product though is to get big Government off the back of small business and that was the purpose of this legislation. Are we achieving that at all?

Mr. GUERRERO. I will answer from an agency point of view and then Mike can answer it from the broader Federal point of view. For EPA, the answer I would say is yes, because otherwise there would have been, as of today there would have been an additional 15 million burden hours of paperwork requirements that we do not now have. By the end of the year there will be 26 million less. So the answer is yes.

But I think it is also clear that agencies may not be taking this to heart the way they should, across the board. There is a need to ensure that there is consistency across agencies. That the big ticket

agencies, the top 10, which includes EPA by the way, but also includes Treasury, Department of Labor, Department of Defense, SEC, and so forth, who have very substantial burden hours as you heard today, it is very important that they look seriously at what efforts they can make.

Finally, it is important that OMB in their role look at the forest and not just the trees. In the past they have been very much content to look at the trees, and the numbers add up and the numbers may not get you to your 10 percent reduction. It is important they look at the overall goal and take that seriously as well.

Senator FRIST. Mr. Brostek.

Mr. BROSTEK. My answer is going to be really quite similar. I think some progress has been made, some agencies are reducing their burden. You can look at this—as auditors we like to think, how much fraud and abuse there would be if we did not exist? If the Paperwork Reduction Act did not exist, maybe this paperwork would be growing much faster than it is. So you can look at it in that optimistic sense.

I would also echo the comment though that I think there needs to be a little more rigor in the process to challenge the agencies on the part of OIRA, to see whether or not they really can go deeper in cutting the burden, to not just accept the agencies' assertions that we really are bound by our statutory requirements, we do not have that much flexibility. Maybe we can engage more in that meaningful negotiation that the legislative history for the Act seemed to suggest should occur in establishing these goals.

Senator FRIST. Thank you, Mr. Chairman.

Chairman BOND. We are very pleased to have been joined by Senator Wellstone. Senator Wellstone, do you have an opening statement and/or questions?

Senator WELLSTONE. I will just include the opening statement.

Chairman BOND. We will be happy to accept it as part of the record.

[The prepared statement of Senator Wellstone follows:]

PREPARED STATEMENT OF SENATOR PAUL WELLSTONE
COMMITTEE ON SMALL BUSINESS
JUNE 5, 1996

MR. CHAIRMAN. Thank you for holding this hearing during Small Business Week. I was pleased yesterday to drop by the SBA Awards lunch, where Minnesotan Tom Schlough was one of the honorees. In fact, I also attended the Minnesota version of the SBA Small Business Awards luncheon last Friday back in the state - an event which I always enjoy.

Today's topic is a good one. It is important to check in on our progress toward meeting the priority goals of small business. I believe we've made some important bipartisan progress on issues important to small businesses during this Congress. Two very important small business priorities have always been paperwork and regulations. We now have the Paperwork Reduction Act and the Regulatory Flexibility Act reforms - both signed into law during this Congress. And of course, we passed important reforms of SBA credit programs in this Committee last year - reforms which became law and have ensured that SBA's important loan-guaranty programs deliver excellent economic bang for very modest taxpayer buck.

The Chairman of this Committee deserves a great deal of the credit for the fact that the Regulatory Flexibility Act reforms are now law. As for the Paperwork Reduction Act, I am very interested, as I'm sure the Chairman and other Committee members are, in learning why the GAO's testimony for today has the title: "Burden-Reduction Goal Unlikely to be Met." That doesn't have a very good ring to it, and I look forward to the discussion of how we can make sure we do meet paperwork-reduction goals.

Finally, I would like to take this opportunity simply to list just a couple of topics that I believe are priorities for this country's small businesses - based on the recommendations of last year's White House Conference on Small Business - and which I hope this Committee can address in the remainder of this Congress. Those are:

- continued effective operation of SBA's credit programs, especially the crucial 7(a) and 504 loan-guaranty programs. I am confident we can find a cooperative way to solve the budget problem facing these crucial programs, which may require a combination of an increase in appropriation and some legislative changes; and

- home-office deduction, and simplification of the independent contractor classification. These may be more difficult. I know we might not have complete agreement on these items yet. But I hope we can move forward on these issues.

I thank the witnesses for being here today.

Senator WELLSTONE. I apologize to the panelists for being late. I was at a markup which ended up not being a markup after all. We waited and waited to get the necessary material and never got it. So I come here frustrated. I would have rather have been here from the very beginning.

I just want to note that—and I am not going to make anybody go over everything again—I was struck by the title, Burden Reduction Goal Unlikely to be Met. I assume that is what you have been talking about with the Paperwork Reduction Act, and I will not make people go over that ground again.

Chairman BOND. Yes.

Senator WELLSTONE. I gather there is some question of whether you have a moving baseline or some kind of stable baseline. I will just sort of pick up on your testimony and will not break the continuity of what you are doing right now, Mr. Chairman. But I am very interested in how we can make this work with the greatest effect.

Chairman BOND. Thank you very much, Senator Wellstone. We will make your full statement a part of the record. I think we have heard some discouraging news and perhaps we need to be repealing laws, among other things. There are a number of problems that have been identified and I am sure that you will find the record interesting.

Senator Coverdell, do you have any further questions?

Senator COVERDELL. First a logistical question. I was going to insert into the record of the hearing the testimony, two statements that were heard by you and I when we had the field hearing in Atlanta.

Chairman BOND. We will be happy to include them as part of this record so that they will be in the context of this hearing.

Senator COVERDELL. I am going to request then the prepared statement of Kelly McCutchen, executive director, Georgia Public Policy Foundation, and both the testimony and prepared statement by Mr. Alec Poitevint, chairman and president of Southeastern Minerals, Incorporated in Bainbridge, Georgia, be made a part of this hearing record. They were both particularly useful statements and I thought it would be appropriate to the discussion here.

Chairman BOND. I would agree with you. The testimony of both of those people were very helpful. We will make them a part of the record.

[The prepared statement of Mr. McCutchen and the testimony and prepared statement of Mr. Poitevint follow:]

Prepared Statement of Mr. Kelly McCutchen, Executive Director
Georgia Public Policy Foundation
before the Committee on Small Business
February 14, 1996

Senator Bond, Senator Coverdell, it is a pleasure to be here today to testify on this important subject.

Last year, Senator Coverdell's Small Business Advisory Task Force asked for our help in identifying the impact of federal and state regulations on Georgia small businesses. The Georgia Public Policy Foundation is an independent, non-partisan organization dedicated to keeping all Georgians informed about their government and to providing practical ideas on key public policy issues. After agreeing to help, we enlisted the aid of the Georgia chapter of the National Federation of Independent Businesses and a specialist in regulatory issues, Dr. Gerry Gay, Chairman of the Finance Department of Georgia State University. We then surveyed more than 100 Georgia small business owners.

Although this was not a scientific survey, based upon the responses we received it is clear that: 1) State and federal regulations are placing a sizable burden on Georgia small businesses, both in compliance costs and in litigation costs; 2) common sense reform of the regulatory framework can benefit the economy by increasing the number of jobs that small businesses are able to create; and finally 3) there is overwhelming support for a thorough review of all new and existing regulations.

What specifically did we find out from the survey?

* The estimated cost of regulations as a percentage of sales was approximately 1.5 percent. This percentage is roughly in line with previous studies.

* Almost one of every four (24%) respondents indicated that they have been involved in regulation-related lawsuits.

* More than half (54%) of the respondents said that they would have hired additional employees in the past three years were it not for the cost of regulations.

* Five respondents indicated they had previously owned a business that had failed in part because of the cost of government regulations.

* All three of the survey's proposed recommendations received broad support.

These proposals included: 1) requiring all state agencies to regularly review existing regulations (98% approval); 2) requiring a cost/benefit analysis for all new state regulations (93% approval); and 3) compensating property owners for regulatory "takings" (80% approval).

What regulations were cited as most burdensome?

On the state level, Workers Compensation and unemployment Insurance appear to be the most problematic, while Taxes/Tax Reporting topped the federal list, followed by regulations from OSHA, the EEOC and the EPA.

From the results of this survey and from our many conversations with small business owners, the frustration with the current regulatory system falls into four general categories.

1) Subjective standards. For example, what is viewed as acceptable by one inspector may be determined to be a violation in the eyes of another.
2) Inconsistency between state and federal requirements and paperwork.
3) Counterproductive bureaucracy. For example, a well-meaning business owner who self-reports a hazardous waste spill can be prevented from cleaning the site for long periods of time while waiting to receive a permit, sometimes as long as two to three years. And due to our inflexible and impersonal system, punitive fines are often levied when business owners have acted in good faith.
4) Burdensome compliance costs:
   A. Time spent developing procedures to ensure compliance and monitoring compliance.
   B. Time spent keeping up-to-date with constantly changing regulations.
   C. Time and cost involved in taking corrective actions to bring the company into compliance.
   D. Management's opportunity cost. Although many larger firms can afford full-time staff attorneys and compliance officers, it is often the small business owner himself who must bear most of the burden of compliance. Every hour spent on these tasks is an hour that he or she is not selling his or her product.

More than 150 years ago, de Tocqueville warned of an American government that in its zeal to do good works "covers the surface of society with a network of small complicated rules, minute and uniform, through which the most original minds and the most energetic characters cannot penetrate."

Unfortunately, de Tocqueville's quote has become a self-fulfilling prophecy. For example, Thomas Hopkins, a notable researcher in the area of regulation, has noted that "The Lord's Prayer is 66 words, the Gettysburg Address is 286 words, there are 1,322 words in the Declaration of Independence, but government regulations on the sale of cabbages total 26,911 words."

In light of this, I hope that the work of this committee will provide the impetus needed to bring some much needed common sense to our regulatory framework.

TESTIMONY OF ALEC POITEVINT, CHAIRMAN AND PRESIDENT
SOUTHEASTERN MINERALS, INC., BAINBRIDGE, GEORGIA
ON BEHALF OF
THE AMERICAN FEED INDUSTRY ASSOCIATION, ARLINGTON, VIRGINIA

"Thank you, Senator Coverdell and Senator Bond, it is a pleasure to be with you, and Senator Bond, it is great to have you in Georgia.

First of all, I have submitted a rather detailed statement that was prepared in part by the American Feed Industry Association, of which I am immediate past chairman. I have chaired two different national associations of small businesses, all in the agriculture field -- one, the National Feed Ingredients Association in Des Moines, Iowa, and most recently American Feed Industry Association in Washington, D.C. Some of my comments will be related to our feed industry, but they are applicable, I think, to all businesses -- in particular small businesses.

Also, Senator Coverdell, it was 1 year ago today that I was in Washington testifying before the Agriculture Committee on this same area of regulatory reform, with others. The good news is that we are still testifying, the bad news is I year later, I am not aware of a single form or single piece of paper that has been done away with despite the good efforts of you and Senator Bond and others that are involved in this process.

I am very pleased that the Commerce Department continues to have a lot of scrutiny, but we seem to be somewhat bogged down -- I look forward to us moving all this legislation over to the White House where I am sure the President intends to sign everything and deregulate our Government.

So from that standpoint, in summary, let me say first of all that we as small business people, in our animal agriculture industry, we are about 75 percent small business, nearly all of them family owned, and we deal with all the alphabet you named, including the Food and Drug Administration.

Immediately after the election in November, the Food and Drug Administration -- I participated in a food and drug law hearing, sort of their legal way to communicate in Washington, and it was very obvious that they had gotten the message of the election and wanted to move toward working, treating us as customers. I am sad to report a year later that we are not quite the customer that we were in early November or late November 1994; I hope we will get back there.

Most importantly, I think what everyone has been saying today is that when we are regulated, it must have a positive effect and it must have some degree of value and in fact, it must achieve some real public benefit. I think the cumulative effect of these unfunded mandates, which is still a correct way to describe them, is that they keep piling onto the process, and I think the Congress has acknowledged in both political parties a need for some reform, and I hope we can work toward reform.

I think it is unfortunate that our agencies do not take, as has been presented earlier, the opportunities to work with States. I know for sure that FDA inspectors and, as mentioned earlier, the EPA, that the States are in a position to do this job and do it well and do it for less cost and I think do it on a basis which is more reasonable.

We in particular know in our feed industry that we would like to have more of the responsibility of the FDA assigned back. Also, unfortunately there are zealots in these agencies and what sort of regulation might be imposed by an agency in Georgia is not necessarily the same interpretation as in Missouri. In fact, the Kansas city office of the FDA is notorious for not even following the instructions -- reasonable instructions from Washington, D.C. We are covered with things we can do away with.

There is a form called the MSDS form, which is a list of supposedly dangerous substances. If you run a small feed mill in this State, rather than having to have the four or five or six items that you might have in that facility that truly are dangerous, an average firm will have 400 to 500 of these in a drawer. As Mr. Sullivan says, if the inspector comes and he goes through and you've only got 499 of these and you are missing one of them, then you may be missing the one that is unimportant, such as limestone which also requires an MSDS.

Also, we in our industry have been subject to the Toxic Substances Reporting Act. We have to report all kinds of enormous inventories and we were burdened by that because unless you release a certain amount you did not have to comply. We, fortunately, after working with OSHA, but spending some millions of dollars, got them to recognize that most companies release 500 pounds or less per year and to exempt our industry. But we cost ourselves millions of dollars in terms of effort to achieve this status.

It is my understanding from the people in our company that have to fill out this form, that those agencies are over a year behind even putting the information in the computer and reviewing the forms. So we are sending data that is 14 to 15 months old when it gets reviewed.

In particular, the Commerce Department. I have been gone from home since a week ago Monday, but fortunately for me, Monday morning, the Commerce Department had sent to me the Bureau of Census annual forms for small manufacturing firms, and they claim that the statistical dealers only draw a few and I have three on my desk. If you have never seen this form, it is a nightmare, because they want to know how much electricity you consume, how many employees you have got each quarter. They want to make sure that I report -- in regard to my friend Marty Kogon who spoke earlier -- how many pounds of scrap metal you sold per year. They send the form back to you if you do not report because they say all manufacturing companies have scrap. This Census form is pages and pages long.

When I first started in this industry 25 years ago, only one of our small businesses was drawn for this form, and it was drawn once every 5 years. Now each of the small businesses that I am involved with has this form drawn for the company every year. For our company, that is like a 25-fold impact, we have five manufacturing facilities, they all get drawn every year instead of every 5 years. Certainly the statistical number could be reduced.

From our standpoint -- and I heard you clearly ask -- I have sort of come up with the Poitevint theory, not to be confused with the congressional theory, as to what we ought to do about this problem. I want to tell you that rather than complaining, I have some actual, for the record, suggestions which I think are reasonable.

First, let us reduce the number of forms at every agency. I would like to see Congress introduce legislation to require reduction. I heard you speak about 10 percent, that is low. I am also aware because I served on a panel one time, we give out bonuses to our Government senior executive level people -- I have served on those panels and evaluated. I would like to

have that added as a mandatory criteria to the process of those forms. In other words, what have you done in your agency to reduce paperwork for the constituents you are serving.

The second thing is that most of these forms we are now filling out that existed years ago, used to come from our Government stamped "voluntary" -- in very small print I might add, you had to read it. But if you took time to read it far enough, it said voluntary. Now it says mandatory. I would like to see how many we can go back -- we do have people in America that love to fill out forms and we should not deny them that opportunity by putting voluntary on there.

[Laughter from audience.]

Third, if we are going to keep these forms, I would like to see us require that the information on the form be reduced. For example, arbitrarily I think 50 percent is a good rule but 25 percent -- in other words, 25 percent of the lines we currently fill out should be reduced.

Then more importantly, we ought to go back and reduce this universe of the sample, so if it is Mike Sullivan's bad year to be drawn, then it is not necessarily my year.

Most importantly, I would like to tell you about a form, for the record, that I am not complying with. Our company, Eastern Minerals in Henderson, North Carolina, that works roughly 30 people, has been chosen by the Department of Commerce, supposedly randomly, to submit on a quarterly basis a P&L for our company. It requires that P&L to be in the same format that you would generally use for general account purposes for that trip to the bank that most of us make to borrow money. In fact, all of those lines are required.

It is required that this particular form be submitted within 30 days of each quarter. We have been in the pool now for almost 2 years. I submitted the first one -- I could not believe and have asked the Congress to indicate to me is there any Member of Congress, Republican or Democrat, that ever voted for a regulation that would require a small business to send a profit and loss statement with your confidential financial information to the Department of Commerce on a quarterly basis. Even the IRS only requires this once a year; granted, we send quarterly estimates. But anyway, I have not been able to find anybody in Washington that will admit they voted for this. Our company has elected to not fill out this form, and we are being harassed by the Commerce Department and we do not have any intention at this time of filling out this form, and we are not in compliance. I think it simply follows others who were honest enough to say sometimes we are not in compliance because we do not know. This is one we are not in compliance because we think it is wrong and it is not defendable.

We need your help, we hope you are successful. I would like for you to send a lot of this stuff to the White House immediately. Maybe we will get it signed, if we do not, then that is what elections are about.

Thank you for allowing me to testify."

[Applause from audience.]

Prepared Statement of Alec Poitevint, Chairman and President
Southeastern Minerals, Inc.
before the Committee on Small Business
February 14, 1996

Chairman Bond, Senator Coverdell, distinguished members of the Committee, my name is Alec Poitevint. I am chairman and president of Southeastern Minerals, Co., Bainbridge, Georgia. I wish to thank the Chairman and the Committee for the opportunity to appear today to discuss the immediate need for federal regulatory reform to ensure the continued competitiveness of American small business generally, and for Georgia small business, in particular.

It was exactly one year ago today I appeared before the Senate Committee on Agriculture in Washington, D.C., in my role as chairman of the board of the American Feed Industry Association (AFIA). At that time I told the Agriculture Committee the greatest impediment to small business competitiveness and job creation in our industry is the archaic, burdensome bureaucracy of the federal government. I repeat that message here today. AFIA in Washington will submit my full statement as part of the formal record of this hearing.

AFIA, as you know, is the national trade association representing the manufacturers of more than 70% of the primary livestock and poultry feed sold annually in the U.S. AFIA's members represent more than 3,000 registered feed facilities in every state, as well as more than 35 state feed organizations, and a dozen foreign feed manufacturing associations.

The feed industry, of which I am proud to be a part, is not a "big company" industry. As the immediate past chairman of AFIA, I am also small business owner. Approximately 75% of the AFIA membership, by federal definition, are small businesses. Most are family-owned.

I applaud this Committee for taking on the challenge of federal regulatory reform as a means of enhancing small business competitiveness and jobs creation. I am here today to give the Committee examples of existing and pending regulations which work against those goals.

As a small business owner, I join my association in our disappointment that regulatory reform legislation has not been approved by the Senate. However, I am gratified this Committee has continued its investigation on the impact of federal regulatory hyperactivity on small business in this country. I appreciate the opportunity to bring the experiences and perspective of an important component of U.S. food production to this discussion.

UNFUNDED MANDATES ON BUSINESS

The examples which will be pointed out today by this hearing's witnesses are just the latest examples of a very old problem. Federal regulation with no clear, established problem to correct, or federal regulations promulgated based upon theoretical risk, have no place in modern government.

Let me state for the record: I do not believe -- nor do most responsible business owners believe -- all regulation is unnecessary, or that business would automatically flourish in a

totally deregulated environment. Reasonable federal regulation is welcomed by the small business as a fail-safe mechanism, a complement to strong industry standards and practices.

My concern, and that of my industry, goes to the increasing number of "unfunded mandates" the federal government passes on to small business, with little apparent regard for the cumulative effect of these rules on competitiveness. These requirements, regulations, fees, etc., are enacted as part of larger pieces of legislation, but there has been little attention paid to the cumulative effect of these additional regulatory and economic burdens.

This layering effect -- restrictions,, more paperwork, fees-for-service -- are strangling business's ability to expand and innovate. The burden falls even more heavily on small business. It is well known that job creation in this country is a miracle of the small business sector; the federal government should be working to facilitate new jobs, not strangle the life out of small business innovation.

All of this zeal to regulate comes with little regard to cost of such regulation when balanced against the projected benefit, nor does it include any analysis of real risk. Too often, these rules are now proposed on the basis of theoretical risk, a basis for rulemaking that has generally been avoided by past Administrations.

At the same time, the Committee must also be aware that any increased intrusion by the federal government into the daily cost of small business operations works against these companies being able to take advantage of export market potentials. Where the federal government has paid lip service to assisting small businesses which wish to enter foreign markets, outdated, unnecessary regulations and paperwork actually work to thwart any government effort.

As immediate past chairman of AFIA, I gave many speeches during my term which restated a single, very clear goal when it comes to the federal regulatory oversight of our industry:

> **"Business regulations must be practical, and they must achieve <u>real</u> public benefit."**

I believe the fundamental flaw in the current federal regulatory mechanism is that regulations are created in a vacuum, published in the <u>Federal Register</u> as proposals or even proposed final rules, all without input or discussion with affected industries.

I mention input from the regulated industry because the basic need for regulation may be mitigated if a government agency has full understanding of industry practices and operations. I will give examples of the feed industry's innovation in this area, efforts which have yielded more practical regulatory approaches after federal coordination with the industry.

Just as state and municipal governments are negatively affected by increased costs of federally mandated programs, so too is business. Business, unfortunately, is often erroneously assumed to be the "deep pockets," able to fund both federal and state programs for which public revenues are lacking.

The ultimate effect is obvious. The more costs of federal and state programs that are passed on to business, the less ability business has to innovate, expand and create more jobs. The converse is actually true: Business, when faced with uncontrollable costs of regulation, will, at best, hold even; more likely, however, business will retrench, controlling costs through job layoffs, production cuts, etc. In addition to the inevitable retrenchment that results from overregulation and its concomitant additional costs of operation, is the inability of many small businesses to take advantage of potential export markets.

My company -- just like thousands of others -- has been forced to spend time, manpower, and considerable dollars creating internal systems to minimize the impact of federal reporting on our daily operations. We strive to be able to keep up withe avalanche of federal paperwork -- it seems a new form arrives almost daily -- without the need for lawyers, CPAs, or employees dedicated to just the fulfillment of federal reporting requirements.

EXAMPLES OF REGULATION GONE AWRY -- AND HOW THEY CAN BE FIXED

The remainder of this statement will deal with specific programs which AFIA has identified as out-of-control or unnecessary. I will also discuss how my industry, in concert with the agency, has been successful in developing alternatives to regulatory schemes in some cases, and obtaining administrative relief from ongoing programs in others. I will concentrate our evidence within those federal agencies with which we have the most contact, as follows:

- The Food & Drug Administration;
- The Occupational Safety & Health Administration, and
- The Environmental Protection Agency

The Food & Drug Administration

The Food & Drug Administration (FDA) has direct regulatory authority over the feed industry. This authority emanates from the agency's mandate in the federal Food, Drug & Cosmetic Act (FDCA) to regulate "food," which translates as anything fed to man or animal.

FDA oversees all components in mixing feed, including animal drugs, the machinery, process and overall operation of registered feed mills, as well as on-farm mixers using certain types of animal drugs. This oversight takes the form of product approvals, product registrations, official status rulings [Generally Recognized as Safe (GRAS) status], Current Good Manufacturing Practices, and facility inspections.

I'll discuss today two areas where we believe FDA needs restructuring, and two areas where AFIA was successful in heading off ill-advised rulemaking through honest compromise with the agency.

A chronic headache for the feed industry has been FDA inspections, not a surprising statement for a federally regulated industry. However, it is not the fact that our facilities are required to be inspected by the agency with which we have problems, but the fact the agency has 1) employed inconsistent, non-feed industry specific criteria for such inspections, and 2) by

not contracting with the states, FDA wastes manpower and precious federal dollars, while inspection quality and scope have suffered.

Our analysis of inspection problems focuses on two primary areas of regulatory deficiency. First, FDA does not generally recognize animal feed plants as separate and distinct from human food production facilities or human pharmaceutical plants.

Feed mill inspections must be practical for both the agency and the inspected facility. Manufacturing processes in feed mills are not the same as for human food or pharmaceutical facilities, and the criteria must be realistic and unique to each industry regulated and inspected by FDA. For instance, human food processing and pharmaceutical plants are much larger than the average feed mill, and food and pharmaceutical facilities generally must operate under near-sterile conditions. Not so for a feed plant.

The same is true for the basic feed manufacturing processes; they bear no resemblance to food processing or pharmaceutical manufacture, yet overall, FDA inspections look at them in a nearly identical fashion.

Second, complicating the lack of feed-industry specific criteria for facility inspection, is the lack of consistent enforcement among the various FDA district field offices. In some cases, this lack of consistency creates agency "fiefdoms," where a district office is actually setting policy for the agency through its actions.

We have had episodes where inspections, which normally take a day or two, increasingly have taken up to a week or more at state-of-the-facilities, with inspectors using pharmaceutical manufacturing plant criteria to judge the operations of an animal feed plant. AFIA members have had inspectors enter facilities, remove documents for which they had no authority, and then provide those documents to non-government third parties for review. The list goes on and on.

FDA appears to be unwilling or unable to bring its district offices into line with Washington policy and programs. And, since it has not reined in these mavericks, private companies are spending thousands of dollars dealing with issues which should never arise under existing policy and regulation. Complaints to Washington fall on deaf ears.

A third area of inspection concern is the lack of expertise of inspectors and the quality and reliability of the resulting inspection. Without specific knowledge of the feed industry and without specific criteria developed by FDA for feed mill inspections, many inspection reports are useless. A solution to this problem may lie in state contracting of FDA feed mill inspections.

Currently, about 25 states have contracts under which FDA pays the state to conduct its Current Good Manufacturing Practices (CGMP) medicated feed plant inspections. The states have demonstrated they can do feed mill inspections in a much more timely fashion given the state agencies' greater familiarity with feed industry facilities and better inspector training.

State contracting also holds the potential for greater federal budget savings and enhanced overall inspection program performance since inspections are done more quickly given the

greater understanding of the industry and its facilities, and because state inspectors can inspect a greater number of non-commercial facilities as the FDCA demands, including on-farm mixers, integrated operations, etc. Individual company inspections are also more efficiently dealt with when it comes to dispute resolution, etc.

AFIA would be willing to work with FDA on a joint industry/FDA training program for its field inspectors. Failing a wholesale shift to state contracting, where inspectors are more knowledgeable about the feed industry, this approach would lead to inspectors who actually understood the production and operating processes unique to the feed industry. It would also save the government money to partner with industry on such training.

FDA/Industry Cooperative Approaches: In two recent cases, AFIA and FDA were able to cooperate on alternatives to potentially devastatingly expensive regulatory proposals which showed absolutely no promise of yielding any practical public health protection.

In one case, FDA announced its intent to propose a standard of zero salmonella in all feed products. The industry was stunned at this proposal for two very good reasons: First, it is practically impossible -- short of aseptic manufacturing, packaging, transportation and feeding systems -- to absolutely guarantee zero presence of an omnipresent microbe in any environment. Second, extant research shows no link between salmonella stereotypes which may be present in feed and those stereotypes isolated in the gut of animals fed those same feeds. In its own proposal documents, FDA said it was proposing the zero-salmonella program even though research indicated feed was not a vector for microbial infection of food producing animals. The basis for the intended proposal? Theoretical risk.

AFIA has had a microbial contaminant control program on the books since the late 1970s. Association staff and members met on several occasions with FDA personnel to provide research, practical industry experience and other source materials to show FDA the error of its intended proposal.

Finally, the agency acknowledged there was not sufficient science on which to base its zero-salmonella proposal, and the issue was referred to an independent scientific organization -- the U. S. Animal Health Association (USAHA) -- for review and recommendations.

A separate but similar situation occurred recently when FDA began the process, based again on theoretical risk -- this time the risk of disease resistance transfer to humans -- to restrict all new antimicrobial animal drugs to a prescription (Rx) status. For the feed industry, this essentially meant all feed mills using an antimicrobial could only do so on the order of a veterinarian, and would be subject to 24 separate and different state pharmacy laws and regulations, as well as those of FDA.

AFIA notified FDA in a 60-page document of the real-world implications of its Rx proposal to regulate a theoretical risk, including the cost to the feed industry and its farmer/rancher customers, the liability implications for feed companies and veterinarians, and the effect such a proposal would have on sponsor drug company research and development efforts.

The feed industry did not simply complain. It drafted, in concert with the other constituencies of the FDA Center for Veterinary Medicine (CVM), an alternative to the original FDA Rx

concept, that while preserving the role of the veterinarian in certain feed mixing decisions, obviated the need for a prescription status for feed products. Out of intense discussions with CVM over more than nine months was born the Veterinary Feed Directive (VFD) proposal. It has been agreed to by the agency and regulated industry, and, in fact, legislative language to authorize FDA's implementation of the VFD program is now pending on Capitol Hill. You want to help the feed industry, help us pass VFD.

What had all the earmarks of a regulatory nightmare for industry -- with no concomitant public health benefit -- has turned into a case study in how frank and honest discussions between the regulator and the regulated industry can lead to mutual agreement on a program, its goals and its measurable benefits.

Occupational Safety & Health Administration/Department of Labor

The feed industry, just as any manufacturing industry, is subject to the regulatory requirements of the U.S. Department of Labor's Occupational Safety & Health Administration (OSHA). This means routine registration, inspections, etc.

The regulatory scheme which gives our industry the most problems today is OSHA's Hazardous Communication Program (HazCom).

HazCom was intended by Congress to provide adequate handling, storage and exposure warning information to workers handling federally defined "hazardous chemicals." The core of this warning or notification program is a series of documents called "Material Safety Data Sheets (MSDS). OSHA published a list of hazardous chemicals to be used as a guide for chemical manufacturers as to what substances required an MSDS.

The company is required to make a "hazard determination" and if a chemical is determined to be hazardous, the company is compelled to create an MSDS. The MSDS is conveyed with the "hazardous" chemical and required to be kept on-site and displayed for worker information.

The HazCom program has become extremely burdensome as chemical manufacturers have determined that an MSDS is required for nearly every substance imaginable. Chemical companies simply found it easier - and legally safer - to issue an MSDS than to go through the costly and time-consuming process of toxicological testing.

The result is that the average feed mill now must file, log and categorize 400-600 hundred MSDS forms received from supplier -- including soybean meal, grain dust and manufactured premixes. If companies were adhering to the intent of the rule, the number of ingredients used by a feed mill which may fit the definition of "hazardous" on which the mill would receive an MSDS, is likely closer to a dozen.

Further the rule holds that if a manufacturer "incorporate(s) a hazardous chemical into his mix using an inclusion level of 1% higher (0.1% for known carcinogens), or incorporate an item into the mix for which you hold an MSDS, then, in lieu of testing the new mixture as a whole, the mix is automatically deemed hazardous.

The net result is this: The vast majority of ingredients received by a feed mill but which carry an MSDS are no more "hazardous" than breakfast cereal; however, because the MSDS arbitrarily conveys a "hazardous" status, the feed industry should by all rights be generating an MSDS on every bag of feed it sells, requiring every farmer, rancher and poultry producer to file, log and categorize these forms.

AFIA has urged OSHA to mandate only substances for which there has been toxicological testing following OSHA standards be required to carry an MSDS. The MSDS should state that the "hazard" determination was met following these OSHA standards. Once the list of actual hazardous substances is created, manufacturers would retain those MSDSs, and dispose of the thousands of unnecessary forms. The manpower and system savings alone -- with no measurable affect on worker health and safety -- should justify this action by OSHA.

The feed industry is trying to mitigate this problem through legislation in the House as part of its Corrections Calendar. The legislation seeks to overcome the intransigence of OSHA when it comes to reasonable amendments to the HazCom program.

AFIA member experience also verifies OSHA inspection procedures are inconsistent and in need of serious revision. Over the years, AFIA has consistently used OSHA as the example of an agency where cooperation between the regulator and the regulated industry has resulted in reasonable rulemaking, solving real problems with measurable results.

However, field experience has taken those reasonable results and turned them upside down. Today, the average workplace OSHA inspection is an example of an overzealous, undertrained inspector spending more time on the quantity of violations than on the overall quality of his or her inspection. Our members routinely report nearly as much time spent renegotiating fines and penalties than time invested in the actual inspection. Invariably, the agency winds up dramatically lowering any fine which may be calculated, an indication most "violations" are technical in nature, more a device to generate revenue -- AKA, taxes -- than eliminate actual workplace risks to employees.

OSHA inspections should lead to the mutual benefit of employer and worker, i.e. the workplace will be safer, the environment more productive. In reality, inspection tend to focus on a list of "reportable offenses" leading to larger cumulative fines, and not on those infractions which could actually lead to workplace injury.

AFIA reiterates the offer made previously in our statement relative to FDA inspections. The industry would welcome a chance to partner with OSHA to ensure inspections are based upon criteria specific to the feed industry, that inspectors are in fact using valuable time and resources to rectify the actual, serious threats to worker health and safety. Again, this would result in a net cost savings to both the federal treasury and industry over time.

Environmental Protection Agency

It is difficult to imagine a federal agency more in need of regulatory housecleaning than the Environmental Protection Agency (EPA). Hamstrung by judicial rulings forcing it to operate under archaic standards, propelled by a "quantity-not-quality" mentality, EPA needs to take a

serious step backwards and view its mandate in the context of not only theoretical benefit, but the actual impact on the viability of production agriculture and agribusiness.

Rather than list a series of regulations which I believe should be eliminated because they cost too much to comply with, and they bear little real benefit, I will relate a "success" story in dealing with EPA. However, it was a "success" which took more than three years, and untold man hours and industry and government dollars to achieve. The frustration for business is that this victory should have been one of those nearly automatic administration decisions made by the agency upon review of AFIA's original petition.

In late 1994, EPA issued a final rule for a so-called small release exemption from filing Form R under Toxic Release Inventory (TRI) Sec. 313 requirements. This was a direct result of a petition filed by AFIA in February 1992, requesting EPA exempt feed and feed ingredient manufacturers (SIC Code 2048) from the reporting requirements of Sec. 313.

The final rule exempted facilities with releases of less than 500 lb. per year. With one signature, EPA Administrator Carol Browner removed an onerous and superfluous reporting and paperwork burden from 92% of the feed industry reporting facilities, facilities which previously had spent up to 100 hours per year complying with Form R reporting requirements.

AFIA said at the time: "After three long years working toward this end, we're pleased EPA responded to our concerns by providing relief for us, and other industries, from this costly and sometimes needless regulation." This exemption saves SIC Code 2048 approximately $42 million a year; EPA saves nearly $1 million in reduced processing costs. For the average feed mill, the savings exceeds $5,000 per year, a considerable sum for a small business.

(However, even with the exemption euphoria, SIC Code 2048 must still monitor and file a "short form" that continues to establish the exemption. In filing to report we don't pollute, it's akin to calling the highway patrol to let them know you didn't speed on your way to work.)

The rationale behind the exemption petition was twofold: First, TRI Sec. 313 (Form R) reporting is the basis for several federal and state "piggyback" regulations, including clean air, storm water and pollution prevention, all predicted on the fact that if you report under TRI Sec. 313 (Form R), you must automatically report under other programs.

Second, overall feed industry statistics showed that of reportable chemicals used by our industry, most were received, mixed and reshipped, with little or no residual. In fact, storm water data supplied for the feed industry showed that overall, feed industry facility runoff exceeded current federal safe drinking water standards.

The point here is that is should not have taken three years to active this exemption. Certainly a federal agency has the responsibility to weight data and err on the side of public health protection when it considers such petitions. However, the evidence was overwhelming, the data and science were unassailable, and the resolution of this petition process should have been more efficient. This program was the classic example of a bad law leading to a bad regulation.

Even if the petition took a year to approve, it would have saved the SIC Code 2048 facilities $84 million; EPA would have saved over $2 million, and each average feed mill would not have $10,000 to continue filling out superfluous forms. This does not count the two-year savings in man hours and industry resources had the petition been approved in a more timely fashion.

We have had similar recent success in getting EPA to review air emissions data under Title V reporting requirements, and its AP-42/PM-10 determinations. However, it took a Corrections Calendar bill in the House, and companion legislation in the Senate, thanks to Senator Grassley, to get EPA's attention long enough for them to review and accept the industry's data -- data that was better than its own.

CONCLUSION

I've attempted today to show a pattern of federal government regulatory behavior that works against small business competitiveness. Examples, I've given today dramatically demonstrate the following flaws in our current system:

- Inspection programs where inspectors are unfamiliar with the facilities and processes they are mandated to inspect, and are more interested in racking up fines rather than addressing actual problems;
- Inspection programs where individuals and regional field offices operate independently of Washington, setting policy and going beyond their legal authority;
- Regulatory proposals destined to fail because they are based upon theoretical, not real-world situations;
- Paperwork burdens and superfluous form filing that sucks up valuable corporate resources while providing no benefit, and
- A system where petitions for regulatory relief take years to achieve, despite overwhelming evidence to support those petitions.

I, like most small business owners, do not oppose federal regulation. Let me restate my fundamental premise about federal regulation of my business:

> **"Small business regulations must be practical, and they must achieve <u>real</u> public benefit."**

However, just as Congress has recognized that the days of passing unfunded mandates back to cities and states are over, so too must the federal government realize finally that business is not a bottomless well of money and manpower.

It is the height of folly to assume business can continually absorb layer after layer of federal regulation, when it is becoming increasingly obvious that not only does much of the regulation have no real effect on the overall quality of the average citizen's life in this

country, but it is seriously hampering American small business's ability to compete both here and abroad.

This situation is particularly dangerous for small businesses. In an industry where the words "consolidation" and "integration" are considered dirty words, it is imperative that the federal government work to unburden small business so that it can remain competitive.

What I and my industry ask is the federal government take a long, hard look at its programs and requirements. There's room for improvement, and industry is willing to help. It will take the ability to balance the costs versus verifiable benefits, and it will take and in-depth analysis of the true risks associated with theoretical situations.

It's time for a reality check.

The effect on jobs creation is the simple, unavoidable conclusion of this inane formula for disaster. If my business is successful, and I am generating a profit, then I have the necessary capital for growth and expansion. This means I hire more people at better wages to help continue my business's success. Conversely, if my company must dedicate increasing hours and resources to simply complying with the seemingly unending flow of regulations from Washington, D.C., then I am lucky if I can maintain my current markets. No expansion, no new jobs, no community development, just status quo. The choice here is obvious.

There is no magic solution. The challenge that must be accepted is for the Congress and the regulatory agencies to join to achieve the following realistic goals:

- Reduce the number of forms business must fill out;
- Shift a greater number of reports from mandatory to voluntary;
- Reduce the amount of information required on each form, and
- Reduce the universe of reporting companies to a reasonable, statistically, valid industry sample.

Mr. Chairman, Senator Coverdell, distinguished members of the Committee, I thank you for coming to Georgia, and for the opportunity to appear before you today. I offer my assistance and that of AFIA to work with you and other like-minded members of Congress to remove regulatory impediments to American competitiveness and job creation.

Chairman BOND. Do you have further questions?

Senator COVERDELL. No, just more of a closing statement. I think that if the jury were the small business community on this question we have been asking, are we making progress, the answer would be no. I accept the testimony that perhaps it is less, but we start from a very bad baseline. Again, this is having a massive effect on our economy. It causes people not to have jobs. It causes businesses not to start. It causes other businesses to throw up their hands and leave the workplace.

I run across entrepreneurs that simply would rather cash in, which is not—while we do not lose the entire value of that, we lose the vibrance and the expansion nature of it I think. So this is very, very serious business. It is not to be taken lightly. And it is discouraging. I think it suggests maybe an agenda item for the Chairman to consider how we might think through how to be more—what the next step might be to be more forceful and more direct, and to publicly state that this really is not acceptable. While there may be very valid explanations, it is just so far from the goal that we are after that something else needs to be done.

Thank you, Mr. Chairman.

Chairman BOND. Senator Wellstone.

Senator WELLSTONE. Just a quick response. I gather that we have also been talking about what needs to be done to get agencies to become——

Senator COVERDELL. We have said, reduce it 10 percent. So they, for whatever reasons, it has increased 10 percent and then from the new level, another level on the mountain, they cannot get down from that much more than 1 percent. So the good news is, it is 1 percent less than the 10 percent increase that we achieved by trying to seek a 10 percent reduction.

Chairman BOND. Is that clear?

Senator WELLSTONE. I think that is the truest definition of optimism.

Chairman BOND. Do you have further questions, Senator Wellstone?

Senator WELLSTONE. No, thank you.

Chairman BOND. I thank our witnesses. I think that what we have learned today about small business, is that they are not seeing the paperwork burden go down. The third-party requirements have been there. They have been in the baseline. However we have done it, legislatively, administratively, I am afraid that we are not seeing the kind of reduction that I believe many in small business would have hoped to have seen. Your testimony and the information you provided have been most helpful.

We will have to go back to the drawing board and we welcome the participation of the Members of this Committee and their staffs in seeing if we can approach this from a legislative standard, and we will look forward to more aggressive utilization of the powers and the authority of OIRA and OMB to achieve it. We thank you very much for monitoring this for us.

Mr. BROSTEK. Thank you.

Chairman BOND. The second panel will be Ms. Mary K. Ryan, deputy chief counsel, Office of Advocacy of the U.S. Small Business Administration; Mr. S. Jackson Faris, president of the National

Federation of Independent Business; office located in Washington, D.C. but doing business out of Tennessee; and Mr. R. Wendell Moore, executive vice president and cofounder of Red Hot & Blue Restaurants, Arlington, Virginia.

I was hoping that Mr. Moore would have some evidence he wanted to submit for the record that we might take under advisement in the back room to sample the continued high quality. But we are very happy to have your testimony with us today.

[Laughter.]

Chairman BOND. I thank all of you for joining us and let us begin with Ms. Ryan.

STATEMENT OF MARY K. RYAN, DEPUTY CHIEF COUNSEL OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION, WASHINGTON, D.C.

Ms. RYAN. Good morning, Mr. Chairman, and Members of the Committee. I am pleased to be here during Small Business Week to discuss implementation of the small business agenda. You have my full testimony and I ask that it be included in the record.

Chairman BOND. Your full testimony will be included as part of the record. We thank you very much for summarizing your testimony. As with the other panel, we would ask all of the panelists to do so. Thank you.

Ms. RYAN. The first hurdle that the office faces is identifying exactly what should be on the small business agenda. To do this, the office consults four information sources: small business trade associations, small businesses themselves, research, and this year in particular, the 1995 White House Conference on Small Business, specifically the 60 recommendations adopted by the conference delegates, which I think it is important to note that the delegates affirmatively voted not to prioritize, giving each of the recommendations equal weight.

In selecting issues on which to work we follow three criteria: can we contribute something new and different to the public debate over a public policy issue where our participation can make a difference? Can we provide information not otherwise available such as the number of firms affected or the severity of the impact? And finally, is the issue one requiring a timely response where small business is not in a position to do so but where the small business interest is significant?

A major starting point for the office's activity this past year has been to focus on implementing the 60 recommendations of the White House Conference on Small Business. Needless to say, we are very pleased with the passage of the Small Business Regulatory Enforcement and Fairness Act which significantly strengthens the Regulatory Flexibility Act and the Equal Access to Justice Act. The small business community has long sought judicial review of agency regulatory flexibility analyses. This issue attracted many votes at the White House conference and small business is grateful for the leadership of this Chair in passage of that legislation.

The Office of Advocacy has spread the word of this major accomplishment to the small business community. We published a new booklet on the Regulatory Flexibility Act which I have asked be distributed to the Members of the Committee and we are currently

drafting materials for use in training sessions with regulatory agencies. I am pleased to report that there is renewed interest in regulatory flexibility analyses among regulatory agencies. We have met with several to discuss the new law and we will continue to do so.

As for the White House Conference recommendations themselves, to start with a network of delegates has been developed to monitor implementation and to be an added voice for small business concerns before Congress and before the administration. Ten regional implementation chairs were elected by the delegates to oversee administrative and legislative activity and to keep State chairs informed of developments. There are also 10 regional issue chairs for each of the 10 issues debated by the 2,000 delegates to the White House Conference. Bimonthly or monthly conference calls, depending upon the level of activity, are held with the issue chairs so that information can be exchanged and action taken independently by the delegates.

Advocacy also developed a catalog of the delegates who expressed an interest in testifying before Congress and the administrative agencies, copies of which I also have distributed, but copies were also sent at the time to every Member of Congress. Indeed, several of the delegates have testified even before this Committee. The tax chairs, for example, testified just this week before the Ways and Means Committee on independent contractor legislation and this morning are at the IRS discussing other small business tax issues. They were hoping to be here along with some of the implementation chairs. I do not know if they have arrived but they were hoping to be here at the hearing so you could meet them. I know that they are going to be interested in calling on you.

The continued involvement of the delegates is important to bring real life experiences to the attention of policymakers at both ends of Pennsylvania Avenue. The President has taken a very direct interest in agency implementation of the recommendations. He has on several occasions asked the administrator of the Small Business Administration for an update, and he has referred to the conference in several press conferences and in his State of the Union address.

This expressed interest of the President has given us a new entre to regulatory agencies in order to spur reform. In my lengthier testimony I iterate many of the changes that have taken place. Greater detail can be found in the report that we submitted to the President last December, copies of which were sent to Members of Congress. We are currently preparing a 1-year report to update the White House and will be submitting a report to Congress in September as mandated by the enabling legislation that created the White House Conference.

Our job by law is to represent the interest of small business before Congress and the administration. We have been successful in moving the administration toward positions favored by small business, such as pension reform, deductibility of health insurance premiums, reduced enforcement penalty policies that emphasize problem-solving rather than punishment, and judicial review. As you may recall, the administration initially was reluctant to support ju-

dicial review of regulatory flexibility analysis, but in the end endorsed it enthusiastically.

Admittedly, we have not always been successful, either with Congress or the administration. Currently, we are taking a position different to that of the Patent Office on legislation to reform patent law. We believe very strongly that current law should be retained and we believe that the reforms proposed in the legislation will harm small business. But the debate is not over and we will pursue the issue. Nor is the debate over on estate tax reform or product liability. We will be working to find common ground to satisfy, if not all, at least some of the small business community's concerns.

As I stated in my lengthier testimony, we devote resources to those issues where we can provide information not otherwise available, where we can bring something new and different to the public policy debate, where we believe we can make a difference, and where there is a need for timely intervention on an issue with small business impact. The most recent issue I can think of illustrative of the latter was our intervention to exempt Small Business Investment Corporations and SSBICs from the bankruptcy law. That exemption is estimated to save $50 million over 7 years.

This brings me to the role of research in identifying issues to help small business. We are proud of our two banking studies that we did which rank the Nation's 10,000 commercial banks as to their lending patterns to small business. This information about bank lending patterns, not otherwise available in the marketplace, helps promote competition and reduces the search costs for small businesses looking for banks more likely to make loans to small firms. This research, coupled with our research showing that less than 1 percent of public pension fund assets are invested in small business confirms the problem that small businesses have in obtaining capital. This despite the fact that small business provides 54 percent of all jobs and 50 percent of total output using only 40 percent of total business assets.

This has led the Office of Advocacy to promote the development of an angel capital network envisioned as a national Internet listing of small firm securities available for review by angel investors. This is intended to provide one more source of capital investment for small business. Our research is further discussed in the lengthier testimony.

In conclusion, it is clear that it is the responsibility of the Office of Advocacy to keep small business issues in the spotlight. The process of developing public policy friendly to small business is an evolving one. We have had some significant successes and what issues or reforms we lose 1 day you can be sure will emerge again until we can arrive at consensus.

I will be happy to answer any questions.

[The prepared statement of Ms. Ryan follows:]

Testimony

of

MARY K. RYAN

DEPUTY CHIEF COUNSEL OF ADVOCACY
U. S. SMALL BUSINESS ADMINISTRATION

Good morning Mr. Chairman and members of the committee. The Office of Advocacy is pleased to participate in a discussion on the "Implementation of the Small Business Agenda" and the Administration's record in adopting and implementing legislation and policy initiatives sought by the small business community.

Before getting into specifics, it would be helpful to review how the Office of Advocacy selects issues on which to devote resources. Our primary objectives are threefold: 1) to contribute something new and different to the public debate on any policy or legislative matter where we believe we can make a difference; 2) to provide information not otherwise available, such as the number of small businesses affected or the severity of the impact of legislative/regulatory proposals; and 3) to respond to proposals in a timely manner with information on small business concerns when small businesses or their representatives are not in a position to do so but where the small business interest is significant. Knowing that we cannot do everything, we have adopted these three criteria for establishing priorities.

The principal sources of information on which we rely to determine issues of concern to small business are:

* Small business trade associations;
* Research on small business issues;
* Direct dialogue with small businesses; and,
* The 1995 White House Conference on Small Business, which has been one of the more significant sources for issue priorities this past year.

WHITE HOUSE CONFERENCE ON SMALL BUSINESS

As you know, about 2,000 small businesspeople attended the Conference last June and adopted 60 recommendations for administrative and legislative action. It is worth noting that the delegates debated and rejected a proposal to prioritize the recommendations, thus giving equal weight to each recommendation. While the vote tallies on the individual recommendations indicate some differing level of significance, the delegates refused to establish priorities.

The President addressed the conference, as did the Vice President on two occasions. Since then, the President has taken a direct interest on the progress made to implement the recommendations. On several occasions, for example, he has asked the Administrator of the Small Business Administration, who has cabinet status, for an update on agency actions on the recommendations. He has referred to the Small Business Conference in several press conferences and in his State of the Union address, which is, to the best of my recollection, a first. The President's interest has had a direct impact on agencies, which has led to some of the executive branch initiatives I will discuss later in this testimony.

Taking our lead from the Conference, we established a network of delegates to work on implementation of the recommendations. Ten Regional Implementation Chairs were elected by each of the 10 regions to monitor implementation and to communicate with state chairs and delegates. The kick-off

meeting with the chairs was attended by congressional and White House staff.

Another network was established of 10 regional Issues Chairs for each of the 10 issue categories addressed by the conference. Advocacy staff participates in conference calls with the Issues Chairs on a bi-monthly or monthly basis, depending on the level of administrative or legislative activity providing background materials and keeping the information flowing. House and Senate staff from both sides of the aisle have participated in some of these calls to discuss congressional progress on legislation dealing with conference recommendations. Congressman Christensen (R., NEB) participated in one call to explain a legislative proposal and to seek feedback. (See Appendix for additional information on monthly activities.)

This entire network has been very valuable in keeping us in tune with issues of concern to small business and provides a direct link to the business community. It provides a window into the economic environments in which small businesses function where changes are occurring. The communications that take place keep the delegates involved in the public decision-making processes -- something with which they are not normally concerned in their everyday business dealings. We understand how busy they are running their businesses. But we also know how valuable their input can be, since only they can provide policymakers with hands-on experiences living with the impact of public policy decisions.

To foster linkages with Congress, a directory of delegates interested in appearing at congressional hearings was developed and forwarded to each member of Congress. Some of the delegates have indeed testified -- on three occasions, I believe, before this Committee. In fact, the Tax Issue Chairs, some of whom have accompanied me today to this hearing, testified this week before the House Ways and Means Committee on the independent contractor legislation.

Six months after the conference, the Office of Advocacy, in conjunction with the Administrator and the National Economic Council, developed a progress report to the President on the status of the recommendations. A copy of that report was sent to every Member of Congress and to every delegate to the 1995 White House Conference on Small Business. We are currently finalizing a first-year progress report to the President which will also be sent to Congress and the delegates. Another report will be sent to Congress in September as required by the enabling legislation that authorized the 1995 Conference.

MAJOR LEGISLATIVE ACCOMPLISHMENTS

Before discussing what has been accomplished administratively to implement the recommendations of the White House Conference on Small Business, it is important to take particular note of two major legislative achievements:

* Amendments to the Paperwork Reduction Act signed on May 22, 1995; and
* The Small Business Regulatory Fairness

Act signed on March 29, 1996.

Paperwork Reduction Act.

The 1995 amendments clarify congressional intent that the law does apply to third party recordkeeping requirements and disclosures. This is a major benefit to small business.

And so are the new recordkeeping reduction goals established by the amendments. Paperwork is a major source of frustration to small businesses and to the extent these goals are achievable, this frustration should abate.

Small Business Regulatory Fairness Act.

Ever since enactment of the Regulatory Flexibility Act, small business has sought to have regulatory flexibility analyses subjected to judicial review. The original legislation, as you know, exempted agency analyses from review. This Congress, with the active leadership of the Chair of this Committee and the support of the Administration, enacted amendments that significantly strengthened the Regulatory Flexibility Act and the Equal Access to Justice Act.

The issue of judicial review was a major issue for the 1995 White House Conference on Small Business. As soon as the bill was passed and signed by the President, we notified the Regional Implementation Chairs and have been discussing the bill's provisions with the Issue Chairs during our conference calls.

This legislation was a major victory for small business and Congress' efforts are being applauded throughout the small business community.

And there has been a marked change in agency attitudes toward regulatory flexibility requirements since passage of the amendments. The Office of Advocacy has met with small business trade associations to discuss the law and distributed information outlining the law's major provisions. We have also met with OMB, EPA, OSHA, IRS, SEC and FCC to discuss the impact of the new legislation on agency processes and regulatory analyses content. In addition, we have had discussions with both EPA and OSHA on the Small Business Advocacy Review Panels required by the law.

We have printed a new publication on the Regulatory Flexibility Act as amended for distribution to agencies and other entities affected by the law. I have copies with me. Finally, we are in the process of developing materials for use in training sessions with regulatory agencies.

It is clear that the law is having an impact throughout all regulatory agencies -- a most welcome development for small business. Historically, some agencies have been very conscientious in their analyses but others, as outlined in our annual reports to Congress, have spotty records complying with the Regulatory Flexibility Act. We expect marked improvement overall in both the quantity and quality of regulatory flexibility analyses.

ADMINISTRATION'S RECORD IMPLEMENTING THE SMALL BUSINESS AGENDA

As you know many of the White House Conference recommendations have both an administrative and legislative component. Our six-month report to the President focused on

actions taken administratively, with brief "action" or "no-action" comments on pending legislation. Since that report, there has been some additional action and I would like to focus on a few items.

TAXES

Independent Contractor. The IRS has recognized the difficulty the 20-step common law test creates for a small businessperson. The IRS has taken significant steps to alleviate some of the burden and uncertainty. They have developed a new comprehensive training manual for their field staff and have centralized the appeal process on independent contractor classifications. A program has also been established to settle cases quickly and give the local agent authority to reduce the back taxes and penalties drastically. This is as far as the IRS can go administratively. Commissioner Margaret Richardson has stated that further clarification will require legislation.

Simplified Tax Reporting. Some progress has been made to introduce simplified tax reporting for small business. IRS has had a program underway to study form simplification that would enable small businesses to file the same form with both Federal and state tax authorities. More work needs to be done and legislation may be needed.

Reduced Recording Keeping for Expenses. IRS has raised the amount from $25 to $75 for which business must retain receipts to justify deductions for meals and entertainment.

Pension Reform. At the White House Conference, the

President announced his proposal for a simplified pension plan called NEST. The NEST plan is very similar to the "Simple" proposal recently sent to the Senate. The Administration and Congress may be close to agreement on this issue.

The President also proposed reforms in the 401(k) tax provisions. These proposals were included in the Administration's 1997 Budget plan.

Increased Expensing. The President has proposed an increase in the amount spent on capital investments that can be deducted as expenses (rather than capitalizing the costs) from $17,500 to $25,000 and continues to support that level.

Deductions for Health Insurance for the Self-Employed. In the context of health care reform, the President indicated his support for allowing the self-employed to deduct 100% of their health insurance premiums. In the interim he supported legislation passed last year that increased the deduction to 30% and has announced his support for a 50% deduction level.

Estate Tax Reform. The President understands the dilemma facing small businesses on the death of an owner. In his 1997 budget has proposed deferral and repayment tax schedules to alleviate in part the tax burden on the surviving operators of the business. We would hope that the President and Congress could arrive at consensus on this issue.

PAPERWORK REDUCTION

In March 1995, the President directed agencies to reduce their reporting requirements by half. Shortly thereafter, the

Environmental Protection Agency (EPA) completed a line-by-line review of all regulations with an agency goal of eliminating 20 million reporting burden hours. EPA has reached the halfway point, having eliminated 10 million burden hours.

The FTC adopted rules to exempt certain mergers and acquisitions from the premerger notification and waiting regulations.

And closer to home, in January of this year, the Small Business Administration completed its revision of 100 percent of its regulations and eliminated more than half the pages of its section in the Code of Federal Regulations.

At the Occupational Safety and Health Administration (OSHA), a new directive has been issued outlining the agency's revised policy for minor paperwork and written program violations. The agency is also conducting a page-by-page review of existing regulations with a view toward eliminating a significant number.

Computer technology is taking hold throughout the government, further reducing paperwork. EPA allows firms to file certain reports electronically.

In February, 1996, Vice President Gore announced the implementation of the U. S. Business Advisor -- a service to provide businesses with on-line information about government programs. It is a one-stop electronic clearing house on the Internet for information on all U. S. Government agencies.

The Office of Federal Procurement Policy (OFPP) has issued a policy memorandum encouraging the posting of acquisition

information on the Internet and link the information uniformly on the government-sponsored acquisition reform network home page.

COMPLIANCE - PROBLEM-SOLVING vs. PUNISHMENT

The Small Business Regulatory Enforcement Fairness Act of 1996, signed into law by the President, includes several regulatory reform provisions that, in additional to judicial review, requires federal agencies to develop policies that emphasize regulatory compliance rather than punishment, establishes a small business and agriculture enforcement Ombudsman and ten regional Small Business Regulatory Fairness Boards to monitor enforcement of federal rules. These are major and very welcome innovations.

Prior to this, in March 1995, the President announced a new approach to lessening the regulatory burden on small firms. Agencies were directed, if allowed by law, to waive up to 100 percent of a fine imposed on a small business if the same sum were used to correct the violations leading to the fine. In June 1995, EPA announced an interim policy to provide incentives for environmental compliance by small businesses. Under the policy, the EPA waives civil penalties that do not cause serious harm to public health or the environment. The interim policy is currently was revised last week to comport with the Small Business Regulatory Fairness Act of 1996.

OSHA is currently working on a comprehensive overhaul of the agency's penalty system and is developing incentive programs to encourage employers to reduce job-related injuries, illnesses,

and deaths by implementing effective safety and health programs. The agency has also instituted a small business mentoring program and, additionally, a consultation service in all 50 states for small employers.

CAPITAL FORMATION

Access to capital remains a problem for small business and several administrative and legislative initiatives have been implemented.

The Small Business Lending Enhancement Act of 1995 gives the Small Business Administration, the flexibility to guarantee loans for more small businesses. This has resulted in a dramatic increase in the number of loans, up 52 percent from fiscal year 1994 to fiscal year 1995.

The Community Development Regulatory Improvement Act of 1994 amended the banking and securities laws to promote the growth of a secondary market for small business loans. The Securities and Exchange Commission (SEC) has proposed regulations that would reduce small business filing and disclosure burdens.

Because there is a need for new public markets for small high technology and innovative firm securities, the Office of Advocacy has led an effort to develop an "angel capital network" envisioned as a national Internet listing of small firm securities available for review by "angel" investors.

OFFICE OF ADVOCACY RESEARCH

As I indicated at the outset of this testimony, the Office of Advocacy finances research, the findings of which are valuable

in determining what course public policy should pursue.

BANKING STUDY

For two years, the Office has conducted an analysis of the banking regulators' June call reports to rank the nation's 10,000 commercial banks according to their lending to small businesses. The information in the studies helps promote competition in the banking industry as well as help small business locate banks in their areas that are more likely to make loans to small businesses.

Additional analysis of the data shows that banks that make small business loans are as profitable as others. This information undermines some of the conventional wisdom about loans to small businesses being riskier as measured by profitability.

PENSION STUDY

Another study of small business investment by public pension funds showed that less then 1% of the $1,003 billion available in 1993 were invested directly in small business. Yet, follow-up interviews with managers of funds that invested directly in small businesses, found that the investments were as profitable as other investments using the same risk criteria. Advocacy is disseminating this information to state officials and fund managers to stimulate re-examination of investment criteria relied on by public pension funds. We are of the view that a small business representative on the oversight boards of public pension funds would help increase pension fund investment in

small business.

FRANCHISING

Recent research by the Office has indicated that over 75 percent of new franchisors disappeared between 1983 and 1993. This means that small business franchisees were hurt by investing in companies that were not viable in the long run. Another study indicated that noncorporate franchises were less profitable than starting small independent firms from scratch. The implication is that FTC should carefully review its Uniform Franchise Offering Circular to make certain that new franchisors carefully disclose the riskiness of the new ventures.

MEASURING THE COSTS OF REGULATION

Several studies measuring the burden of regulations on small business have already been submitted to this Committee in previous testimonies. As recommended by the White House Conference delegates, we are working with IRS to reduce the paperwork compliance burden of tax regulations. To most small firms, research indicated that payroll recordkeeping is the most onerous aspect of regulatory paperwork.

ELECTRIC UTILITY DEREGULATION

Recently completed research indicates that large power companies may pass "stranded costs" on to small firms when electric transmission and power distribution is completely deregulated. The reason is that many electric companies have excess capacities, and larger firms often have other power alternatives, leaving consumers and small firms to absorb the

costs of excess capacity. This is both a federal and state issue. Due diligence is required by both regulatory bodies to make certain that discriminatory pricing is not used by larger utility companies as the deregulation process proceeds. One suggestion, as with pensions and franchising, is to place a small business representative on state regulatory commissions.

FEDERAL RESERVE SURVEY OF SMALL FIRM FINANCES

Co-sponsored by SBA and the Federal Reserve Board, 5,000 firms were intensively surveyed to 1) observe any effects of banking consolidation, 2) study the use of financial services by women-owned and minority-owned firms, and 3) to determine whether the credit needs of these firms were being met. Preliminary findings from the study indicate high usage of personal credit cards for business purposes and limited use of home-equity loans to start firms. Implications are to make new business aware of lower cost regulatory alternatives that drive down the cost of credit. An example of the latter includes finance companies--which have lower regulatory costs.

CONCLUSION

This is a somewhat brief sketch of what has been happening administratively and legislatively in the Administration to implement a small business agenda. The Office of Advocacy has not prevailed on every issue it has addressed with the White House. We lost on procurement and product liability; we may be losing on patent reform. But on several fronts we have provided information not elsewhere available to the Administration.

Because of this, the Administration has developed positions close to if not identical to that of the small business community at large. Our one-year report to the President and our report to Congress in September will provide greater detail on the issues.

APPENDIX

BRIEF SUMMARY OF MONTHLY ADVOCACY ACTIVITIES

WHITE HOUSE CONFERENCE ON SMALL BUSINESS

JUNE 1995

Assisted WHCSB staff during National Conference.

In conjunction with WHCSB state delegation chairs, organized and elected chairpersons for each region and representatives from ten federal regions for the eleven issue areas.

Published **The 1995 White House Conference on Small Business Implementation Network** booklet, which provides all delegates with names, addresses and telephone and fax numbers of implementation leaders. Mailed booklet to Congress and all the delegates.

Forwarded the sixty recommendations of the conference to all Members of House and Senate, Cabinet, and all Federal agencies.

Held Regional Issue Chair conference calls in Human Capital, Technology and Information Revolution and Taxation.

JULY 1995

Held meetings with federal agencies to discuss WHCSB issue recommendations.

AUGUST 1995

Hosted organizational meeting of the Regional Implementation Chairs. During this meeting, the chairs held discussions with the House and Senate Small Business Committee staff and the national small business organizations.

SEPTEMBER 1995

Assisted WHCSB with distribution of WHCSB Final Report and with Commission closing.

The Chief Counsel for Advocacy spoke at the New Mexico State Small Business Conference.

Sent letters to relevant agencies and departments highlighting recommendations which are relevant to them.

Held Regional Implementation Chairs Conference call and Regional Issue Chair calls in Environmental Policy; Human Capital, Regulation and Paperwork, Main Street, Taxation, Technology and Information Revolution, Procurement, Open Forum/Unclassified and Capital Formation.

OCTOBER 1995

SBA Regional Advocates assisted Regional Implementation chairs with planning WHC National Implementation Day. Final 60 recommendations were presented to state officials across the country.

Sent mailing to all delegates with sample press releases for local media support.

Held Regional Implementation Chairs conference call and Regional Issue Chair calls in Community Development, Human Capital, Regulation and Paperwork, Capital Formation, Procurement, Open Forum/Unclassified, Technology and Information Revolution, and Taxation.

NOVEMBER 1995

Worked with all federal agencies to coordinate a six month report to the President on WHCSB Implementation progress.

The Deputy Chief Counsel for Advocacy spoke to the Alaska State Small Business Conference on WHCSB implementation.

Held Regional Implementation Chairs conference call and Regional Issue Chair calls in Capital Formation, Human Capital, Procurement, Technology and Information Revolution, and Taxation.

DECEMBER 1995

Regional Implementation Chairs held meeting in conjunction with the National Legislative Conference on Small Business Issues. Region IX hosted sessions designed to assist delegates in organizing and promoting the sixty issue recommendations.

Regional Tax chairs held strategy session and met with the IRS Commissioner in conjunction with National Legislative Conference.

Presented six-month report on WHCSB implementation progress to the President, sent copies to all members of Congress.

Held Regional Issue Chair calls in Capital Formation, Technology and Information Revolution and Main Street.

JANUARY 1996

Sent Six-month report on WHCSB implementation progress to all delegates.

The Chief Counsel for Advocacy spoke to the Michigan State delegation and the Minority Delegates Caucus.

Held Regional Implementation Chair conference call and Regional Issue conference calls in Environmental Policy, Capital Formation, Technology and Information Revolution, and Taxation.

FEBRUARY 1996

Coordinated meeting at the White House for National Economic Council, Domestic Policy Staff and major federal agencies and departments to examine progress of Administration in implementation of the WHCSB issue recommendations.

The Chief Counsel for Advocacy spoke to the WHCSB NAWBO Economic Summit.

Held Regional Implementation Chair conference call and Regional Issue Chair conference calls in Environmental Policy, Procurement, Capital Formation, Taxation and Technology and Information Revolution.

MARCH 1996

Continued liaison with relevant federal agencies regarding the implementation progress.

The Chief Counsel for Advocacy spoke to the Minnesota WHCSB delegation.

Held Regional Implementation Chair conference call and Regional Issue Chair conference calls in Capital Formation, Environmental Policy, Human Capital, Regulation and Paperwork, Procurement, Taxation, Open Forum/Unclassified and Technology and Information Revolution.

APRIL 1996

Sent quarterly WHCSB issue update to all delegates.

Held Regional Implementation Chair conference call and Regional Issue Chair conference calls in Capital Formation, Procurement, Environmental Policy, Technology and Information Revolution and Taxation.

MAY 1996

The Chief Counsel for Advocacy spoke to the CA WHCSB delegates.

The Chief Counsel for Advocacy addressed the TX Governors Conference on Small Business on WHCSB implementation.

Began the process of coordinating and producing the first annual report on WHCSB implementation.

Held Regional Implementation Chair conference call and Regional Issue Chair conference calls in Capital Formation, Procurement, Open Forum/Unclassified, Human Capital, Taxation and Technology and Information Revolution.

International Trade and Technology delegates met in Washington with the Department of Commerce to discuss WHCSB issues.

Chairman BOND. Thank you very much, Ms. Ryan.
Now we turn to Mr. Faris.

STATEMENT OF S. JACKSON FARIS, PRESIDENT, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, WASHINGTON, D.C.

Mr. FARIS. Mr. Chairman, thank you very much for inviting us to be here. I am Jack Faris with the National Federation of Independent Business. We represent 600,000 business owners in all 50 States and have been here for 53 years, serving as the voice for small business. We very much appreciate the opportunity to be here and you for holding these hearings and for your leadership.

We are very pleased with what has happened in this session compared to what happened in the last session. It is tremendous. Even though we are not very excited about how many laws have actually been signed into law and taken effect on Main Street, which have been very few, we are very pleased with the direction that is being taken by this Congress, and we appreciate your leadership.

Things like regulatory reform that you have led on; increasing the health insurance deductibility for the self-employed; the small business exemption under the starting wage bill; clarification of the use of independent contractors. I could go on and on. We do appreciate the leadership. This city needs a lot of small business leadership and in your Chair you are doing an excellent job. We appreciate it, Mr. Chairman. From our perspective, that is what we see.

We have looked at this and as an organization looked at our membership and asked them, as we always do, where do you stand on these issues and that is where we take our position. As each of you know with our voting records, we do that based on what our members tell us. They have told us very clearly that their top five priorities in this Congress have to do with, No. 1, regulation, which we have been working on; tax simplification, and tax reduction. We heard about that with the IRS a few minutes ago.

Third is that we have to have health care reform. Not a revolution, but sincere health care reform. Fourth, we have to have legal reform. It is a nightmare on Main Street, for so many small businesses, the threat of lawsuit. And fifth, we have to quit spending money out of an empty pocket. If small business owners were here in this room today, our membership, and they heard that 80 percent of the problem in paperwork reduction involves one agency, and that within 4 months after the President signed the Paperwork Reduction Act into law there was an executive order written that excluded the IRS from that regulation, they would be appalled.

I am a recovering banker, Mr. Chairman. What we found out when we looked at the overdraft list in the morning, that if you took off 80 percent of your overdraft problems you could not make a substantial reduction in your overdrafts, especially at the same time if you were trying to reduce overdrafts and you encouraged your customers to increase their amount of overdrafts before they started reducing them. That goes back to your weight loss example which was on target from our people. We see that Washington is bloated.

We could reduce 26 percent of the cost of doing our Government and not hurt in services. So far we have not had anybody, any of

our members, call to complain about a service they have lost because of reductions the Government has made.

In regulatory reform we have seen some help in terms of putting some teeth into a law that gives a small business the opportunity to come back to the Government to say, you are not doing what you are supposed to be doing in terms of looking out for small business in new regulation. We have seen things in the health care area that we feel are helpful, but do not go far enough in terms of participating in purchasing groups, in terms of having medical savings accounts; giving us an opportunity in the private sector to solve our problems.

We have seen in the whole area of tax reform, having served on the Kemp Commission and participating in the hearings we held around the country, everything kept coming back to three simple letters, IRS. We figured out that that agency, its codes and all its regulations, we just need to start over again. I grew up in a service station. My dad used to tell me about some automobiles brought in for repair, son, let's save the accelerator and put the rest of it in all new. I said that in a House committee the other day and Congressman Hancock told me that we should have saved the brakes and not the accelerator.

So we see some things done in legal reform. We are just so chagrined—I am sorry that Senator Lieberman is not here this morning because he was a great leader in the bipartisan effort for getting some legal reform into the product liability bill. We had a bipartisan, very simple bill and the President vetoed it. It is that sort of thing that really disgruntles the people on Main Street. They cannot understand something that clearly helps the consumer and the small business owner, and why it would not have happened.

Of course, balancing the budget, here we go again. The discussion you have already had this morning in terms of inflating the numbers. As it appears to us you raise the numbers and then you can always reduce the numbers. That gamesmanship has been going on too long and needs to change.

We do applaud and thank this Congress for the leadership, the dramatic difference in change between trying to do something to resolve the problems with Government and small business, reduce paperwork, regulation, taxes. Give us some relief and we will produce the jobs that we have been producing and even more. We will grow the economy so that the deficit is reduced because of growth in the economy, not because of a decision made here.

In closing, Mr. Chairman, the issues we are talking about are not politics, they are principle. Our commitment should be not for the next election, but our commitment should be for the next generation. That is the core of what we are talking about today. Thank you again for giving me the opportunity to be here. I look forward to answering your questions.

[The prepared statement of Mr. Faris follows:]

STATEMENT OF

S. JACKSON FARIS

PRESIDENT
NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Subject: Implementation of the Small Business Agenda

Before: United States Senate Committee on Small Business

Date: June 5, 1996

Introductory Comments

Chairman Bond, members of the committee, thank you for the opportunity to speak here today. My name is Jack Faris and I am the President of the National Federation of Independent Business (NFIB). NFIB is the nation's largest small business advocacy organization, representing more than 600,000 small and independent business owners across the United States. For more than half a century, NFIB has served the needs of small business on a broad spectrum of issues. We set our positions on matters of public policy by a regular polling of our membership.

It is fitting that you have decided to hold a hearing to ascertain what needs to be done to improve the state of small business in this country. If government could find a way to accomplish all the items in the small business agenda I will detail below, not only would America's small businesses fair better, but, more importantly, so would Americans. I realize that to some that may seem a bold assertion. But I believe it's true -- what's good for small business is good for the nation.

In addition to accounting for approximately 38 percent of the GDP, small businesses constitute more than 98 percent of the business population. Small businesses have created about two-thirds of the net new jobs in the American economy since the early 1970s and they employ 53.7 percent of the workforce. (NFIB *Problems and Priorities*, 1993 and *1994 Presidential Report on the State of Small Business*) In fact, I would expect small firms to contribute more than half of the 23.3 million jobs projected to be created in the nation from 1990 to 2005. (Data source: Bureau of Labor Statistics.)

The entrepreneur is the primary source of business innovation and economic growth in America. Without them we would not have such modern-day necessities as personal computers,

air travel, insulin, lasers, pacemakers and air conditioning.

Inasmuch as these men and women are the creators of our tomorrows, they are also the historical embodiment of the American dream. Owning one's own business reflects the tried and true ideals of the American dream. Small business owners represent the freedom, independence, and perseverance that are identified with the American way of doing things. It's no wonder then that studies show that citizens have a great deal of confidence in and admiration for small business. A recent *US News and World Report* study revealed that on a scale of one to seven, the public rated small business close to five for dependability, honesty, and the skills to get things done. The federal government, however, only scored a three.

I know that Congress and this committee in particular, is seeking ways to both improve the public perception of the federal government and to create a more small business friendly environment. This, in turn, will lead to an even stronger economy and the creation of more jobs. The following agenda will be of use when striving for these goals.

The Small Business Agenda

The small business legislative agenda, as defined by NFIB's members, will require both legislative and executive action and cooperation. In some cases, the Administration will necessarily be held accountable for signing or implementing the laws this Congress has already passed, in other cases, we will call upon Congress to pass important pending legislation.

This agenda reflects the attitudes and priorities of our members as reflected in the numerous pollings and surveys NFIB has conducted. We poll our members five times a year to gather member input on current legislative issues facing the nation. The results of these mandates direct our policy responses and initiatives. In addition to these polls and other special member surveys, every four years the NFIB Foundation publishes the results of a nationwide survey conducted to determine the top problems and priorities faced by small business owners. We use this publication, entitled *Small Business Problems and Priorities,* to help us better address the needs and concerns of our members in the political arena. We expect the 1996 edition to be released in the near future.

At this time, I would also like to point out that this agenda is consistent with the final list of recommendations approved by the delegates of the 1995 White House Conference on Small Business. In general, we at NFIB are pleased to see both the Congress and the President enthusiastically supporting many of those recommendations.

A. Regulatory Reform

NFIB would like to commend this Congress for passing two laws which will help to lessen

the burden of government regulation on small business -- The Small Business Regulatory Flexibility Act was strengthened with the passage of the Small Business Regulatory Enforcement Fairness Act and The Small Business Paperwork Reduction Act (PRA) reauthorization.

The Small Business Regulatory Flexibility Act was enacted in 1980 to help ease the regressive impact of "one-size-fits-all" regulations on small business. It was intended to force agencies to consider the differences between big and small business by forcing regulators to, among other things, make regulations fit the scale of the business. Unfortunately, it was not working because many bureaucrats were ignoring this provision and there was no way for interested parties to challenge such non-compliance in court. The judicial review provisions contained in S 343, and included in HR 3136 (The Debt Ceiling Bill) will force agencies to think twice now before they try to exploit the loopholes in the Regulatory Flexibility Act.

This bill was also quite beneficial to small business because it included amendments to The Equal Access to Justice Act, allowances for waivers of penalties for first violations, reviews of regulator behavior through a small business ombudsman, permits compliance assistance programs and created provisions for the Congressional review of regulations. NFIB is aware that the onus of initiating judicial or congressional action on the basis these new "rights to challenge" falls upon the shoulders of those being regulated. We want to assure you that we will endeavor to act swiftly and responsibly in this accord.

A strongly bi-partisan reauthorization of the 1980 PRA was one of the first regulatory victories for small business during this 104th Congress. The PRA tried to address the problems of growing paperwork burdens by creating the Office of Information and Regulatory Affairs (OIRA). This office reviews and approves -- or, if too burdensome or unnecessary, disapproves -- all paperwork requests by federal agencies. Since 1989, this law was in a state of limbo. Reauthorization not only reactivated OIRA but it also overturned the Supreme Court decision in *Dole v. United Steelworkers* which had exempted from review any government forms that did not have to be returned to the federal government. This sounds like nothing significant until you realize that such federal mandates account for about one-third of all paperwork requirements. Lastly, the PRA set a government-wide paperwork reduction goal of 10 percent in each of the two years after enactment and 5 percent from fiscal 1998 through 2001.

Unlike with Reg Flex, the onus for properly implementing the PRA falls upon the Administration. For the sake of our members, we at NFIB would like to be announcing that the PRA has met with unprecedented success since its passage, but regrettably we cannot. Unfortunately, and in spite of its rhetoric, the Administration has failed to fully and properly implement the act. Some examples will illustrate our conclusion.

Example One: IRS Exemption. On October 25, 1995, I testified before the House Committee on Small Business along with IRS Commissioner Margaret Richardson. We were there to discuss the IRS's initiatives to Reduce Regulatory and Paperwork Burdens on Small Business. During our discourse, I made certain to mention that our reading of the Final Rule on

the Paperwork Reduction Act (60 FR 44978, 8/29/95) permits the IRS to be exempted from the law's public protection clauses. My assertion led Chairwoman Jan Meyers to ask Commissioner Richardson several questions so as to get the IRS interpretation on which of their paperwork requirements they considered within and outside the scope of the public protection section. The answer, which came by way of a technical memorandum prepared by the IRS Office of Chief Counsel on March 22, 1996, (copy available) does little to refute my conclusion. On May 22, 1996, Chairwoman Meyers reacted to this by issuing a new set of questions to Sally Katzen, OIRA Administrator at the OMB, regarding their interpretation of the final rule (copy available).

I am confident that no representative or senator who voted for the PRA intended to exempt the IRS -- but it took less than four months for the Administration to write a regulation that provided such an exemption. To make matters worse, it is well within the purview of the IRS to remedy this situation on its own through the established system of public announcements, etc. So I am left wondering, why is the IRS reluctant to be covered by the PRA?

Example Two: The EPA and the 10 Percent Paperwork Reduction. We know the PRA calls for a goal of a 10 percent annual reduction in paperwork for the first two years after enactment. But, as part of a March 1995 government-wide effort by the Administration to eliminate some federal regulations and improve others, EPA Administrator Carol Browner committed to reduce the paperwork burden imposed by existing environmental regulations by 25 percent. The EPA is to accomplish this goal by the end of this month. Given the EPA's January 1995 baseline of about 81 million hours spent on such paperwork per year, this commitment translates into a goal of reducing this burden by slightly more than 20 million hours.

On March 7, 1996, Stanley Czerwinski, an Associate Director in the Government Accounting Office (GAO), testified before the House Committee on Small Business. He detailed the results of a GAO study on the EPA's progress in paperwork reduction (copy available). Among other things, the GAO determined that initial reductions were calculated in a way that overstated their effect and that far from reducing its paperwork burden the EPA was actually increasing it. I quote, "At the same time EPA is pursuing a goal of reducing its paperwork burden by 20 million hours, its paperwork burden is increasing because of changes in programs, reestimates of the hours required to complete the existing paperwork requirements, and new rules on measuring the paperwork burden. Given these changes, even with the projected reductions, EPA estimates that its overall paperwork burden will be about 117 million hours by the end of fiscal year 1996." **That's an increase of 36 million hours!**

We want to be fair -- we do see the EPA making some positive steps on behalf of small business. One instance is the EPA policy on Compliance Incentives for Small Business released on May 22, 1996 (copy available). This policy sets guidelines and criteria for the Agency to reduce or waive penalties for small businesses that make good faith efforts to correct violations under most EPA statutes. But the Administration must do more.

Example Three: OMB's Mandate to Assess Small Business Impact. OIRA is required by

the PRA to assess the impact of proposed regulations on small business. The purpose of this is to provide a safeguard against unnecessarily burdensome regulations. In order to be effective such assessments must be accurate. If they are not accurate the credibility of the regulatory system will be jeopardized. And let's be honest, "credibility" already is not one of the regulatory system's strong suits -- OIRA should be building this up, not tearing it down.

But the tearing down has already begun. In two recent actions by OSHA, the Proposed Injury and Illness Recordkeeping Rule (61 FR 4030, 2/2/96) and the collection of information for the Hazard Communication Standard (61 FR 10384, 3/13/96) the OMB has issued statements that such actions will have zero impact on small business (copies available). We at NFIB disagree completely. And our thoughts are echoed by this Administration's very own Small Business Administration. (copy of SBA Hazard comments available, SBA Paperwork comments are not yet submitted, NFIB did not comment on Hazard, but did on Paperwork). In view of such inconsistencies, we believe that it is imperative that the Administration make every effort possible to ensure that future OIRA assessments are as realistic and accurate as possible.

As you can clearly see from these examples, the Administration needs to improve its implementation efforts with regard to the PRA so that meaningful reductions in paperwork burdens on small business can be achieved.

In spite of these two very important regulatory successes, there are many other issues that should be considered. Most of these are addressed in currently pending legislation. We ask that Congress take all necessary steps to push the legislation through and that the President commit himself to signing these important pro-Main Street provisions:

1) Enhance private property rights and restrict takings. HR 9 has already passed, but the Senate version, S 605 has yet to reach the floor. With federal land regulation continuing to increase, small business property owners are increasingly denied the use of their land by government enforcement of environmental laws. The language of the US Constitution's Fifth Amendment must be reaffirmed: The federal government may not "take" private land without paying the owner fair compensation.

2) Implement risk assessment/cost-benefit analysis. HR 9 has already passed, but the Senate version, S 343 has been delayed by a filibuster. While the amendments to the Regulatory Flexibility Act do call for regulatory impact analysis for small business, NFIB members believe that language calling for "cost-benefit analysis" and "risk assessment" across the board for regulations makes good sense.

3) Enact a sunset law for all federal regulations. HR 994 is ready for floor action but S 1346 is still tied up in the Senate Government Affairs Committee. The federal government has on its books a large number of regulations that have long since outlived their effectiveness. Regulations should not have a life of their own. A requirement to sunset and reauthorize all government regulations would force Congress and agencies to review each program's merits and

effectiveness before it can be reestablished. I urge this committee to examine the requirement of the Reg Flex Act for agencies to periodically re-examine the small business impact of their regulations.

4) Enact Comprehensive OSHA Reform. Comprehensive reform in the House, HR 1834 regrettably is effectively dead; but limited reform through HR 3234 will face the full House Economic and Educational Opportunities Committee soon. In the Senate, S 256 is ready for floor action. Small businesses believe strongly in workplace safety but OSHA regulations are overly burdensome and complicated. Enhanced workplace safety will result better from government consultation programs, not harsh enforcement actions.

5) Rewrite the Fair Labor Standards Act (FLSA). The House and Senate have bills pending in committee -- HR 2391 and S 1129. The FLSA is one of the worst in terms of the paperwork regulation it imposes on small business. NFIB continuously hears complaints from our members regarding wage and hour reporting requirements. The administrative and paperwork burdens caused by this law should be reduced so that small employers can comply more effectively and avoid costly mistakes that could shut down their businesses.

6) Reform the Americans with Disabilities Act (ADA). The ADA is ambiguous, excessively burdensome and overly broad. Congress and the President should commit themselves to clarifying reform.

B. Tax Reform

Small Businesses want two types of tax reform -- specific tax changes and system-wide reform. In survey after survey, small business owners have identified their federal tax burden as one of the top three problems facing their businesses (NFIB *Problems and Priorities*, 1986, 1992, and NFIB's *Small Business Economic Trends*, 1994). Thus small business owners have a tremendous stake in the debate over tax policy.

Specific Changes. NFIB strongly urges Congress to consider adopting several very important tax relief provisions. When making your decisions about how to cut taxes, NFIB and its members hope that you would keep in mind the "three C's" of small business and taxes: Complexity, Cash Flow and Capital Formation.

Complexity -- Keep it Simple! Complicated paperwork and regulations are the bane of small business owners. Many of our members wear multiple hats within their business and unlike larger firms, there is no legal counsel down the hall to read and interpret new IRS regulations. The IRS is by far the biggest paperwork and regulatory problem for small business. Regulations and paperwork associated with paying taxes are in and of themselves a tax -- a regressive tax that is higher per capita on small firms than on large. For these reasons, reducing the complexity of our tax code for small firms has been a major NFIB goal for years.

Cash flow, not profit, is the key to starting a successful small business. In a 1994 survey of NFIB members (*Problems and Priorities*), cash flow ranked as the third highest problem for small business. Coming up with the cash to pay bills and make payroll is a constant challenge in a small firm. For tax policy, this means that small firms would rather deposit less taxes in the first place, than reclaim them late through deductions or credits.

Capital formation becomes important as an established small firm seeks to expand and grow. Smaller firms have fewer capital formation options than large firms. Because many small businesses are founded with investments in human capital rather than physical capital, the banking system has a more difficult time evaluating the risks involved correctly. Thus, with banking funds being an inadequate source of capital, small businesses need tax changes that will create incentives for investment in small firms by both investors and business owners themselves.

NFIB's small business tax agenda reflects the above principles. The agenda includes several items. Most important in this regard are the goals of tax reduction. NFIB urges the Congress to take action on S 1053 which cuts capital gains on the sale of investments and S 1610 which would clarify the independent contractor definition. We also ask that the Senate take steps to increase the expensing limit, relax the home office deduction and eliminate death (a.k.a estate) taxes.

In addition to the proposals mentioned above we would ask that Congress eliminate some of the complexity of our tax system by taking steps to simplify the tax accounting for smaller firms.

At this time, we would also like to express our strong support of the SIMPLE tax plan proposed by Senator Robert Dole in S 1006. The rising administrative costs and legal complexity of pension plans are forcing small business owners to drop their pension plans in ever increasing numbers. For the same reasons, many newer businesses are unable to set up such plans. As structured, the SIMPLE plan will eliminate prohibitive restrictions and make it easier for small business owners and their employees to save for their retirement.

System-wide Reform. In an extensive survey of our members on tax policy (*NFIB Tax Survey*) completed last year, 79 percent of those responding said we should substantially change the federal tax code as it affects both businesses and individuals; 5 percent said the code is general okay as it is. More importantly, when asked, our members believe that structural tax reform should encompass two main facets: 1) lowering taxes, and 2) simplification. In fact, when an NFIB survey question asked members to identify the greatest burden created by our federal tax system, 42 percent said it was the amount of tax paid, and 39 percent said it was the complexity of the laws/rules.

Recently, I was a Commissioner in the National Commission on Economic Growth and Tax Reform. We concluded that the status quo was smothering small business. The Tax Reform Commission report made some very bold recommendations regarding how to change the tax

code. But we did not recommend any particular plan of action for we recognized that there was no "single" correct way to do so.

NFIB urges Congress and the President to review these suggestions. However we handle the issues of transition, which will surely not be easy, it is abundantly clear that America's small business owners, perhaps more than any segment of our society, are ready and eager for change. Small business owners have survived and served as this nation's job growth engine, despite the overwhelming burden placed upon them by today's tax code. By lifting this burden we will allow them to reach their full potential, and be able to see the true power of the American entrepreneurial spirit.

C. Health Care Reform

For years, our members have cited health care reform as one of their top priorities. Both the House and the Senate have passed health reform bills (HR 3103 and S 1028). Now the issue is off to conference committee. NFIB urges the Congress to act to insure that small business will finally get the same rules big business gets when they buy health insurance. NFIB wants the final legislation to promote affordability, availability and portability.

Affordability is the key to availability. This will be accomplished if the following items in our health care agenda are included:

National Small Business Purchasing Groups. One of the major problems with the current health care system is that big business buys health insurance under a different set of rules than small business. For example, New Jersey small business owner Sal Risalvato voluntarily provides health insurance for his employees. But when he buys insurance, Risalvato must pay for benefits mandated by the state.

The rules are different for a big company such as General Motors. With tens of thousands of employees, GM has considerable savings due to economies of scale. On top of that, companies that are big enough to self-insure -- to pay claims out of company funds -- get a special break: no state mandated coverage requirements. These requirements alone can add up to 30 percent to the cost of premiums.

The House bill would allow small firms to band together across state lines to purchases health insurance and be governed by the same uniform set of rules as plans under the Employee Retirement Income Security Act (ERISA), a 1970s law that exempts businesses with self-insured benefits from state law. These purchasing groups would increase coverage and decrease premiums for small business owners and their employees.

The Kassebaum-Kennedy bill in the Senate has a purchasing group provision as well. But we feel that it would be largely ineffective. The "Private Health Plan Purchasing Cooperatives" would allow small businesses to set up purchasing groups but without the exemption from costly

state laws corporate America enjoys. In addition, small employers would not be able to band together across state lines to purchase health insurance in the most effective way possible. We urge the Congress to adopt the House language in this regard.

100 Percent Deductibility for the Self-Employed. Under current law, self-employed business owners can only deduct 30 percent of their health care premiums while incorporated businesses can deduct 100 percent. Increasing the health insurance deduction would help small business owners defray some of the high costs of health insurance and reduce another disparity between millions of self-employed owners and big corporations.

NFIB ideally wants tax equity and the deduction to reach 100 percent. The House bill raises it to 50 percent the Senate bill, to 80 percent. We urge Congress to increase the deduction as much as possible, as soon as possible.

Medical Savings Accounts (MSAs). MSAs would give families and individuals the ability to control their own health care costs. NFIB members support MSAs. The House bill would permit small business owners to deduct the aggregate amount paid into a medical saving account from their taxes. A measure to add medical savings accounts was defeated in the Senate. We hope that the conference committee will recognize the need for this cost controlling mechanism.

Medical Malpractice Reform. Only the House bill contains provisions that would reduce the costs lawsuit abuse imposes on the health care system. Reforms include limiting noneconomic damages such as pain and suffering to $250,000 and capping punitive damage awards at $250,000. This reform should be in the final bill.

Availability and Portability. Both the House and Senate bills will ensure that people will not be denied health insurance if they change jobs or lose their job. They also guarantee that small businesses will have access to health insurance that cannot be canceled. NFIB strongly supports these concepts.

The time has come for meaningful, market-based reform to health care. We urge the Congress to consider our comments as they create the final legislation and we urge the President to sign this act into law.

D. Legal Reform

With the passage of S 565 and HR 956, real legal reform was at hand. Despite strong bi-partisan support, this legislation was vetoed by the President, thereby preventing the implementation of much needed changes to our legal system. This bill embodied many concepts from NFIB's small business legal reform agenda: punitive damages were limited, proportionate liability was established and a national product liability law was created. (Although excluded from this bill, we would also like to see the English Rule adopted.) We stand committed to increasing grassroots support for this type of legislation. While we understand that further action

on this legislation is not likely this year, we look to maintain strong bi-partisan support for its passage in the early days of the next Congress.

In addition to reforming the legal system, NFIB would like to see the Superfund law reformed. Small businesses have three major problems with the existing law: 1) its structure encourages litigation due to the permitting of third party lawsuits; 2) there are only limited *di minimis* provisions which would allow small businesses to extricate themselves early from the lengthy settlement process; and 3) it has a strict retroactive joint and several liability scheme.

We realize that Superfund reform is a top item for this Congress. Negotiations are still ongoing on HR 2500 and S 1285, the comprehensive Superfund reform legislation. There are several provisions in the House legislation which would encourage the Senate to include in its bill: a small business exemption which would exclude the vast majority of small businesses from liability, exemptions from all oil and battery recycling sites, incentives to prohibit third parties from being dragged into Superfund and an exemption of liability at co-disposal municipal landfills.

Passage of Superfund reform is entirely possible this year. We encourage you to push ahead in this regard.

E. Budget Matters

America's small businesses were pleased when Congress authorized the line item veto and took action to halt unfunded mandates. But, when it comes to budgetary matters they still are most concerned with our nation's budget deficit.

In a 1994 survey, 95 percent of NFIB members stated their support for a balanced budget amendment to the Constitution. This amendment should include tax limitation language to prevent taxes from being raised every year to balance the budget. NFIB feels that a Constitutional amendment will discipline Congress to balance the budget, resulting in lower interest rates, increased economic growth, and a decreased need for more taxes.

Conclusion

In conclusion, while much as been done, much remains to be done. Slow progress is being made in the regulatory and budget areas; on legal reform and tax reform it appears we shall have to wait until the next congress; on health care reform the question may be answered this week or next.

Chairman BOND. Thank you very much, Mr. Faris. Thank you for your kind words about this Committee and the Congress.

As we turn to Mr. Moore, I made comments about the delicious product he puts out, and I am a big fan. But I also should note for the Members of the Committee and the other members in the audience here that from February 1991 through January 1993 Mr. Moore served in the Office of Advocacy of the U.S. Small Business Administration, and during part of that time was acting chief counsel for advocacy as well as deputy chief counsel. So he comes very well-prepared to address the subject before us today.

With that, it is a pleasure now to welcome Mr. Moore.

STATEMENT OF R. WENDELL MOORE, EXECUTIVE VICE PRESIDENT AND COFOUNDER, RED HOT & BLUE RESTAURANT, INC., ARLINGTON, VIRGINIA

Mr. MOORE. Thank you, Mr. Chairman, and Members of this Committee. I appreciate the opportunity to come here this morning. My name is Wendell Moore. As the Chairman said, I am the executive vice president and cofounder of Red Hot & Blue Restaurants, Inc., a 20-unit barbecue restaurant chain headquartered in Arlington, Virginia. From February 1991 through January 1993, I served in the Office of Advocacy of the U.S. Small Business Administration. During a large part of that time I served as the acting chief counsel for advocacy as well as the deputy chief counsel.

As you may know, the first Red Hot & Blue was a small 89-seat restaurant in Rosslyn, Virginia, that opened in December 1988. My two partners and I opened that restaurant primarily so that we would have a place to take our friends and meet our own desires for good smoked barbecue. Our success was overwhelming and allowed us to build other restaurants as well as begin to franchise. I am very proud to say that we currently own and operate six restaurants and oversee 14 franchised units. In addition, at least five more Red Hot & Blue franchises will open this year including one in Europe—in Amsterdam—next week.

I come here today as a small businessman, an entrepreneur, if you will. I am no longer a political appointee nor do I have a set political agenda. However, what I do have is the unique experience of running a small business as well as having served in the office charged with the responsibility of representing small business interests before Congress and other Government agencies and departments. It is because of these experiences that I believe I can offer some insight into the independence, effectiveness, or lack thereof, of the Office of Chief Counsel and some suggestions as to how this position might be strengthened if that is what you all desire.

First of all, it is apparent that the intent of Congress, as expressed by Members of Congress while I was employed at SBA, was that the chief counsel was "to be the independent voice" for small business. This was complicated, however, by the fact that the position is appointed by the President, yet has its FTE level and overall resources controlled by the SBA administrator. Further, as I recall, the Code of Federal Regulations implementing the law establishing an Office of Advocacy describes the function of the office as being under the direction of the administrator.

On the other hand, there are provisions in the law suggesting independence, such as those related to preparing and publishing reports without OMB clearance. Also, the public law setting the executive level classification for the chief counsel states that the advocate may not necessarily represent the administration's position. Because of this ambiguity, the issue of independence is one that has been around since the enabling law of 1976 was implemented. Clearly, without specific clarification of the independence issue, the potential for further confusion will always exist.

If your intent is that the office be completely independent, then legislation should be enacted that includes clear and precise language to that effect. Additional consideration should be given to removing advocacy from the SBA and having the chief counsel appointed by a bipartisan panel made up of Senators and members of the House from both parties.

Second, the public law hiring authority granted the chief counsel is inconsistent with the purpose for which it was created. I believe that the intent, particularly in the economic research division, was to allow the chief counsel to hire experts to conduct research on a particular issue of interest to small business. In theory, their tenure at SBA was to have been determined by the scope and duration of the research. Upon completion of the research they were to have returned to their respective academic positions, thereby freeing up funds and positions for the conduct of new research. This would have created a means by which the best and brightest minds could have been brought to Washington at Government expense to study and report on important small business issues.

Regrettably, the public law hiring authority has been used to install a more or less permanent research staff in the Office of Advocacy. At least it was while I was there. While many of those currently employed are talented and dedicated individuals, neither the individuals themselves nor the process that has allowed them to remain at SBA year after year correctly embodies the original intent of the public law hiring authority.

As a practical matter, during my tenure many, if not most of the studies contracted out through the RFP process and expected to be completed within 1 or 2 years were overdue. Prior to my departure we had begun discussions with the Office of Procurement and Grants Management to look at ways to improve the contract award and oversight procedures. I do not know what, if anything, has been done to improve this situation.

In addition to problems caused by confusion over the proper use of the public hiring authority, a lack of sufficient resources often impaired the office of the chief counsel's independence making it difficult, if not impossible, to meet certain objectives of the law. For instance, there was little money for travel and the printing budget was cut to the point where we could not print and distribute all of our mandated and expected publications. Our ability to communicate with even a small portion of the small business community was adversely affected by cuts in overall resources. While the budget got progressively thinner, the broad legislative mandate of the chief counsel remained unchanged. Therefore, a review of the current mandates and ultimately a list of focused and specific di-

rectives would in the final analysis be the greatest benefits to the office of chief counsel in serving the small business community.

As a small businessman, I would like to think that there was someone in the Federal Government looking out for my best interests. In theory, the advocate could be that person. But in reality, he or she really cannot. As long as the person in that position is appointed by the President and has its budget and staff level determined by another Presidential appointee, how independent can this person be?

I recently learned that legislation had been enacted that strengthens the Regulatory Flexibility Act by permitting small businesses to seek judicial review if they are adversely affected by a final agency action. This long overdue legislation will certainly aid the chief counsel's office in performing their responsibilities under the Act. I would commend all those involved in getting this legislation enacted.

Mr. Chairman, and Members of this Committee, I am sure that over the past few months you have heard testimony or been visited by various representatives of the 20 million small businesses in this country. These representatives have been virtually unanimous in opposing nationalized health care, supporting legal and regulatory reform, opposing the increase in the minimum wage, and supporting the targeted jobs tax credit. I am unaware of any position that the office of chief counsel took on these issues, but I ask you, if you had a truly independent chief counsel would not his positions be the same as those of small business?

Again, I want to thank you for the opportunity to be here and I am available to answer any questions.

Chairman BOND. Thank you very much, Mr. Moore. On some of those questions that you raised at the end of your statement, we have sought the advice of the chief counsel for advocacy, and I regret to say that they have not been consistent with the views of small business as you have outlined.

Let me talk about performance of the Regulatory Flexibility Act. I am going to direct the question—I want to give a preface to it—to Ms. Ryan. OMB publishes its unified agenda, the May 1995 unified agenda on Federal regulations showed about 5,133 regulations under consideration by the Federal Government. The Federal agencies themselves, and I do not always trust them, identified 918 separate regulations as having a significant effect on small entities. I think you see that on the chart over there to your left.

Now we know from testimony before the Congress that Federal agencies often ignore many of the impacts of their rules on small business. That is one of the reasons we worked together and through this Committee passed a bipartisan bill that passed 100 to nothing in the Senate. We wondered if we had left too much on the table. But it was signed into law by the President, and we think that it is high time that we really get a focus on it.

I think that that 918 probably undercounts the number of regulations affecting small business. In any event, last week we received from the Office of Advocacy its annual report on the implementation of the Regulatory Flexibility Act during 1995. It identified 57 instances where the Office of Advocacy filed written comments; 57 comments out of the 5,133 regulations and only 57 com-

ments on the 918 regulations the agencies identified. Actually, it is only 55 separate comments because one letter was counted three times.

In 1992, if you go back to the left-hand side of the chart, by comparison, the Office of Advocacy commented on four times as many rules even though there were almost 1,000 fewer regulations being considered during 1992. I asked the Committee staff to take a look at those 55 comments, and frankly, I was a bit distressed and disappointed and I think the small business community should be distressed.

First, we found that very few of the letters contained any substantive comments or suggestions for making the regulations less burdensome. All too often the comments seemed more concerned with advising the agency of the formalities of compliance with the Regulatory Flexibility Act without concern for the substance. We found lots of the comments went to the Agricultural Marketing Service, but very few comments to the three agencies that small business consistently identified as their biggest concern: IRS, EPA, and OSHA. In fact, the chief counsel did not comment on a single IRS regulation. There were only two comments on EPA rules during all of 1995 out of the 428 pending regulations under consideration by EPA.

Also, there are only two comments to OSHA during all of 1995. One of them, January 26, 1995, was on the proposed OSHA rule on indoor air quality standards and ergonomic standards. I think that indoor air quality could have a tremendous impact on small business, and OSHA received over 100,000 comments from small business, more than any others. The comment of the Office of Advocacy listed in the report actually was signed by the administrator of the Small Business Administration.

This is the letter, one-page long on the two most controversial OSHA rulemakings in recent memory. Regulatory Flexibility is not mentioned in here, but on the indoor air rule it says, "the issue is whether there is a less complex and less costly way to achieve an indoor air quality standard more appropriate to the cost structure of small business." On the ergonomic standard, "these issues involved are scientifically complex and rules could have significant cost impact on small businesses if the costs and benefits are not properly weighed."

This, to me, does not seem like you are getting into the substance of these two critical issues. I would just ask, Ms. Ryan, for you to comment on why Agricultural Marketing Service got the bulk of them but this was all they said on the indoor air and the ergonomic standards. How would you respond to the concerns I have generally about what the counsel has been doing?

Ms. RYAN. On the ergonomics rule, there were a lot of public hearings and staff work that went into that, and our position was sort of well-known through the course of those hearings and a lot of discussions with the staff. I think at the point that we submitted our comments it was clear that the ergonomics rules was going to go under serious revision.

With regard to the comments in 1995 versus 1992, in 1995 there were about 121 rules that were proposed with initial regulatory flexibility analysis and we agreed with some of those. So we com-

mented on the ones that we did not agree with in terms of their regulation.

I am surprised, Senator, that you feel that our comments did not go to substance because in many instances we do get into the merits, and I think at some cause of dismay with the agencies because they feel that our position should only address the procedural issues of the Regulatory Flexibility Act. We have always interpreted our authority to allow us to use the Regulatory Flexibility Act to get into the merits of a rule, and we have done so.

We have not necessarily, however, gone to the agency and said, the rule should contain X, Y, and Z provisions. What we have addressed has been the impact of the regulatory provisions on small business and brought that to their attention.

Chairman BOND. Maybe we have overlooked some of those. If you would submit those specific examples; we may not have found them.

[In further response, Ms. Ryan submitted the following:]

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

June 7, 1996

Honorable Christopher S. Bond, Chair
Committee on Small Business
United States Senate
Washington, D. C. 20510-6350

Dear Senator Bond:

As requested by you at Wednesday's hearing, enclosed are copies of the letters written by Advocacy in 1995 commenting on 1) the impact of regulations on small business and 2) agency compliance with the Regulatory Flexibility Act. As I testified Wednesday, the comments do address the specifics of the rules in question as to the impact on small business and also discuss the flaws in the reasoning of agency analyses.

In your question about the number of comments submitted by the Office in 1995, you raised several points that deserve additional amplification.

1. IRS regulations are interpretive regulations and as such are exempt from the Regulatory Flexibility Act. This explains the absence of official Advocacy comments on IRS rules. Even the new amendments adopted by the Small Business Regulatory Enforcement Fairness Act of 1996 exempt IRS rules from the law except to the extent that proposed rules impose a data collection requirement.

Having said that, we nevertheless spend a great deal of time working on tax issues affecting small business. We have urged Congress and the Administration to preserve the targeted capital gains tax treatment for investments in small business. We have worked with IRS on the independent contractor issue to the extent that IRS, at our urging, has taken several steps administratively to clarify and simplify its procedures to lessen the burden on small business. We were also successful in getting IRS to clarify its "Abuse of Partnership" rules and its rules on routine transfers of Sub "S" stock. Most recently, we were successful in persuading IRS to clarify its regulations so that more small businesses could more readily take advantage of the targeted small business capital gains provisions. Most of this was accomplished through informal contacts (some formal) and meetings with the IRS.

2. The number of our comments on agency compliance with

the Regulatory Flexibility Act is historically consistent with, if not higher than, the number of comments submitted by the Office in the past ten years, and was accomplished with fewer staff. (See enclosed chart.) Comparison with the 1992 number of comments alone is not instructive.

The number of comments submitted in 1992 is abnormally high, in excess of every other year by at least a factor of four. A cursory review of the letters written in that year reveals that the great majority were form letters. (Sample copies are enclosed for your information.) Clearly, the Office in that year did not follow the same criteria for drafting regulatory comments as used by previous or more recent Chief Counsels. Review of the record of the last ten years provides a more appropriate comparison.

3. As I indicated in my response to your question on our involvement with the Indoor Air Quality Standards, we submitted lengthy comments on the rules. A copy of those comments, written in August 1994, is enclosed for your review and was furnished to your staff prior to the hearing. The one-page letter you cited in your question was a letter from Administrator Lader to Secretary Reich. That letter was an effort to pursue this important issue and to raise the debate to the cabinet level.

4. Over the years, in our reports to Congress on agency compliance with the Regulatory Flexibility Act, we have reported the persistent resistance of the Agricultural Marketing Service (AMS) to comply with the Regulatory Flexibility Act. Only six of the 57 comments letters we wrote last year were comments on that agency's spurious reasoning as to why their orders did not have an effect on a significant number of small businesses. We felt we had to continue our efforts to achieve compliance since, as you know, thousands of small food processors are subject to the orders of the AMS. Although we have tried to get the Service to comply with the law, have held meetings with them and with the Deputy Secretary, the Service has successfully resisted complying because there was no way to force it into compliance. With the new amendments to the Regulatory Flexibility Act, thanks to your leadership, there may be a change.

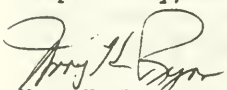
5. You also asked if the Office of Advocacy would support an exemption from the Fair Labor Standards Act (FLSA) for firms with gross revenues of less that $500,000. As we stated in our letter to you of May 9, the impact of a minimum wage increase on small business is not dramatic. The vast majority of small businesses pay their employees above the proposed minimum wage level. Large businesses hire more minimum wage workers than the smallest businesses. (Approximately 4.1 million workers in firms with more than 500 employees earn less than the proposed minimum wage as contrasted with the approximately 2.5 million workers in firms with few than 10 employees earning at the same level.) Moreover, we find that, to attract good employees, small businesses often must pay their workers more than that paid by

large businesses.

At the present time, firms with gross revenues of less than $500,000 are exempt from the FLSA except for their employees engaged in interstate commerce activities. Application of the interstate commerce qualifier narrows the exemption for small business. This Office historically has been supportive of tiering within legislation, as well as regulations, to lessen the impact on small business. We are, therefore, supportive of an exemption for small firms grossing less than $500,000 from the proposed increase in minimum wage.

Thank you for the opportunity to present the views of the Office of Advocacy. We request that this letter and the enclosed chart be placed in the hearing record.

Respectfully,

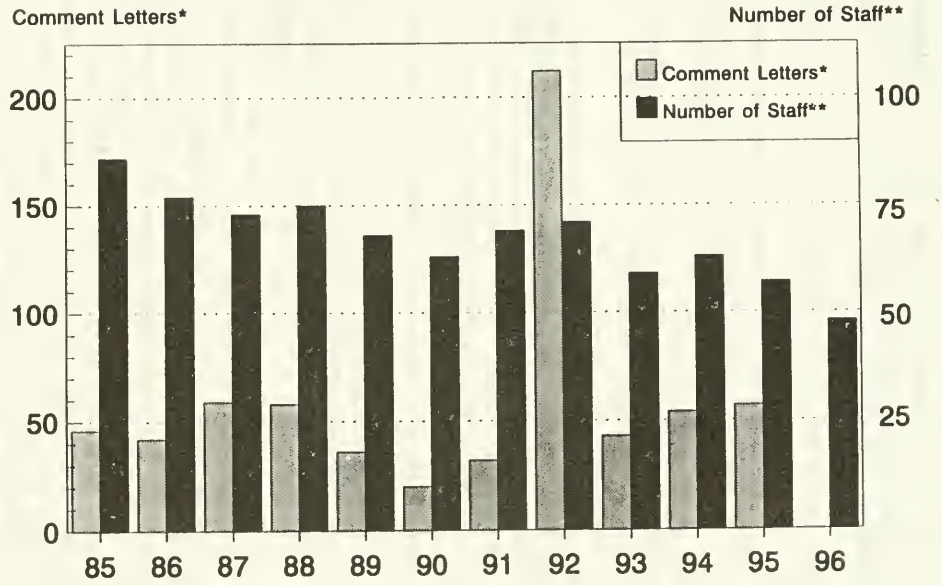


Mary K. Ryan
Deputy Chief Counsel

Enclosures: as stated

Regulatory Flexibility Act Comment Letters

Office of Advocacy, U.S. Small Business Administration



*Comment letter totals are recorded on a calendar year basis.
**Staff totals are recorded on a fiscal year basis.

Chairman BOND. Let me turn now to Senator Burns for questions.

Senator BURNS. I want to pursue that just a little further. The Office of Advocacy budget for 1996 was around $3.4 million. You are requesting this year $5.2 million. Besides the booklet on regulatory reform and enforcement, how did they use the $3.4 million in the first place for small business? At your conference, was not the minimum wage talked about?

Ms. RYAN. No, Senator, it was not. It was not even on the radar screen at the White House conference. Even though we addressed it in a policy book that we distributed to the delegates, it was not an issue that they considered.

Senator BURNS. Why would I get it from my small businessmen at home and it would be overlooked at a conference of that importance?

Ms. RYAN. I am not exactly sure why. Remember, the agenda of the conference was something that started with the 50-plus State conferences at which the delegates to the State conferences developed some agenda items. Those issues then went to regional conferences and then the—I forget exactly how many, maybe 120, 200, 300 issues came to the national conference and then they voted on 60. They massaged those over extensive debate and meetings. I cannot answer why the issue of minimum wage did not come up.

I think it is important to note that our studies show that it is questionable whether or not an increase in the minimum wage will significantly affect a significant number of small businesses. There are clearly some small businesses that would be affected by an increase, but it is a question of the intensity or severity of the issue. You probably heard from a small business person who would be affected by an increase in the minimum wage.

Senator BURNS. Not only one, but as you travel across—I do not know where you are from and from what State you got your beginnings, but you go back and I will tell you, if there is one thing that I hear among business people, it is that it's not fun being in business any more. It is not fun anymore. When you have just got tons and tons and tons out there looking and you cannot make a little bitty mistake and survive; you just cannot do it.

We can talk about all the paperwork situation. We can talk about what your office is doing. But we have got to get on the street where this is accounts receivable and this is accounts payable. Nothing is going to happen over here until something happens here. That is what we have got to do. Now if we can relieve that—and it just seems like the Office of Advocacy has done nothing in that respect. I am wondering what we are getting for our $5.2 million.

Ms. RYAN. I think it is important for you to know, Senator, that we had a session at the White House Conference called Main Street. That was intended to get at the small businesses that are on Main Street, such as small retailers, small pharmacies, and what-have-you. The issue did not even come up there. So I cannot answer the question "why" other than to say it was not even on the radar screen.

Senator BURNS. You see, probably if you are going to get a person out here to do a job and to fill a position that takes some skills,

you are not going to get them for minimum wage. We know that. But what happens whenever you raise the minimum wage, it affects the whole matrix system. In fact, it is an unfunded mandate on local governments and State Government. But you affect the whole matrix.

I am just surprised that that was not talked about. Mr. Faris, would you like to comment on that, please?

Mr. FARIS. Senator, what you are hearing out West is the same thing we are hearing all across the country. I would suggest there are at least three reasons why not. No. 1 is, no one that I talked with who came to the conference—and over one-third of the members who came were NFIB members—ever thought that it was something to be discussed because it was assumed that this is not going to be an issue in this next Congress. We assumed that this was not going to be a problem. So it was not a major discussion.

No. 2, if you look at the breakout of the people who came, we had a number of people who wanted to run for delegate because they had one issue that was burning in their heart. They wanted to be sure that one issue got addressed. So they were one-issue people.

No. 3 is, if you look at the breakout of the people who came, in general overall small business in America about 23 percent are in the retail industry. We have 23 percent of our 600,000 members in the retail industry. And there were 8 percent of the White House delegates in the retail business. One of the reasons is, they do not have time to leave their retail business to go to meetings and to come to Washington.

So the people who hire minimum wage workers—starting wage we prefer to call it—are generally people who have their sleeves rolled up, at their place of business early Monday, late Saturday, and they do not have time to get involved in these meetings. They are the forgotten people out there that we are trying to say, listen.

We were very surprised personally that this issue came up. Until the labor unions decided it was going to be a political issue, it was not an economic issue. The Wendy's franchise in Gallatin, Tennessee, is trying to hire people at $6 an hour for any shift. Senator Frist, who we are very proud of to have as a Senator from our State and on this Committee I can tell you in our home State, Tennessee, minimum wage is rarely paid. When it is paid, it is usually a starting wage for people trying to get their first job—like my son Steven Faris in Nashville this summer who is very proud to have started with a minimum wage job, because it was a start for him. That is this whole misguided issue.

Again, in terms of the advocate's office, the inner workings of the Federal Government, it is very important for us, our members have said, that the advocate's office be there and be strong, but do not spend very much money. That is where we see in terms of enforcement.

The starting wage issue never came up on the horizon. If it had, even the members at the Conference with the small amount of retail would have still principally said, no. And 87 percent of all of our members say, absolutely no to an increase in the starting wage.

Senator BURNS. Would you like to comment on that, Mr. Moore?

Mr. MOORE. I concur completely with what he is saying. On the other issues, we have franchises located in Jackson, Mississippi,

and is raising the minimum wage there going to be the same as it is in Manhattan? Is that fair? There is a whole different cost of living in Mississippi than there is in parts of the Northeast. But I would concur completely with Mr. Faris.

Senator BURNS. I just find that odd because it is sure talked about—and I thank you for that. Thank you, Mr. Chairman. I have got to go talk about whirling disease now. That is not dance lessons either.

[Laughter.]

Chairman BOND. Thank you, Senator Burns.

Senator Frist.

Senator FRIST. Thank you, Mr. Chairman. Mr. Faris, good to see you again. I appreciate the representation from Tennessee on the panel today, both with you and appreciate all your great work for small business, but also Mr. Moore. That barbecue you are promoting has its home right there in Memphis, Tennessee. So I appreciate you promoting that Memphis barbecue around this country. So well-represented, and thank you both for being here.

Mr. Faris, you have been very involved in the tax reform that we have today, the review of the commission that you mentioned. We talked earlier today about the Paperwork Reduction Act and you brought up in your oral comments the fact that the IRS, if you look at the paperwork which really hits the small business person much of it, whether it is 80 percent or 50 percent or 40 percent, relates to the 480 possible tax forms and the 280 other forms that are used to fill out those 480.

Are we expecting too much, without doing as you said, "starting over," to aim for paperwork reduction in the arena of the IRS now? Again, I am linking back to the previous panel, and its effect on the small business person. Is there anything that we can do, given where we are today, other than starting over in terms of our tax code? Given the range of forms that are out there, given what the IRS has today as its responsibility, is there anything that can be done in paperwork reduction and its effect on the small business person given those realities?

Mr. FARIS. Senator, when the Congress passes a law that has a 10 percent goal and the executive branch then decides to exclude 80 percent to start with and allow other people to inflate their numbers to start with, small business sees that as a mockery. Let us just go ahead and veto it, if you are not in favor of it, if you are not going to see that it happens. In small business, if the owners tell the person running the business, if it is someone else, you have got to reduce costs 10 percent, you do not come back later and say, let me tell you what I did. Costs went up and now I have reduced them .9 percent. No, sir; you are looking for another job.

Quite frankly, that is how we feel on Main Street is, what is the problem? I have talked to the commissioner and I am very impressed with our IRS commissioner. I think that Ms. Richardson is working hard at her job. I think it has just gotten out of control, Senator. I know one thing they could do is stop sending all these condemning, damning letters before they ever really know what is really wrong or if there is a problem. I have gotten too many of them personally.

We feel that there is so much that could be done in terms of not sending out people to start asking me about a lifestyle audit; asking me where I took my wife to dinner and how much dinner cost, which they are doing today. I do not know if that comes under the OIRA purview, but it is a lot of money being spent, Senator, that we do not think needs to be spent. We think we still could collect the money without being so negative and without spending so much money doing it.

Senator FRIST. Both you and Mr. Brostek both cited the EPA's paperwork burden increase; you did in your testimony. The EPA keeps recalculating what its baseline is, and I understand a part of that although these estimates, when you have as your goal a 25-percent reduction it makes it a little bit hard to measure. So then when I see the numbers I am a little less comfortable with interpreting that. What about Main Street, small business? NFIB, you reach out constantly to them. What kind of feedback can you give us on EPA, which we hear about in our field hearings again and again. Paperwork Reduction Act and actual impact, is it making a difference at all?

Mr. FARIS. Making no difference. The only difference they are seeing is more, not less. Our real frustration is, we have people that come out to try to determine the life of a piece of property from EPA and they have never had the responsibility of signing the front of the paycheck, but yet they are going to make decisions to determine whether this person can stay in business or not, whether the people who have jobs there lose their jobs or not. We are saying we should have regulation, we should have balance, we should have an umbrella under which we all operate. But it has gone too far.

The only change we see, Senator, is we see more. We do not see less. It has not gotten to Main Street yet.

Senator FRIST. My time is just about up. Mr. Moore, your testimony really to me is very straightforward, the SBA's Office of Advocacy and what needs to be done. Could you just share with me the perspective of your predecessors? Do you think that they would agree with what you have said in terms of independent views being limited by the office?

Mr. MOORE. At the time that I was there I think I was the fourth acting chief counsel in that period of time. I would be hesitant to say for the record what someone else's position may or may not be. However, I do know that there was an inspector general's report that was completed, I believe in October 1991, that talked about the execution of that office and its mandates and management. I believe that it did conduct some interviews with some previous chief counsels on this issue.

But I would think that at least the two chief counsels that I was associated with or knew of at that particular time would agree. I think that anyone that had been in that position knows how frustrating it can be. The dynamics of the relationship that you have or that particular person has with the administrator is very, very critical to the success of the chief counsel's office.

I do think that depending on where an Administration is on positions that affect small businesses you may need a more vocal advocate. At the time I was there, I was in an acting position, I was

not the Presidential appointee, so what I basically tried to do was respond to the IG report, stabilize the office, make sure that we tried to meet the mandates which, frankly, are very, very broad; very, very general.

It was extremely difficult to get everything done that needed to get done. In regard to the congressional intent for the office, what can you really do and how well can you do it? You are not Cabinet level, the SBA administrator is not Cabinet level. So how big a voice can you be? How loud a voice can you be for small business?

I would suggest that the closer the chief counsel can stand shoulder to shoulder with this gentleman, the more likely the positions are going to be heard by any Administration or Members of Congress.

Senator FRIST. Thank you very much.

Thank you, Mr. Chairman.

Chairman BOND. Thank you, Senator Frist. We will have another hearing later on that will focus on Kansas City barbecue.

Senator FRIST. We are doing fine right now.

[Laughter.]

Chairman BOND. Ms. Ryan, we have talked some about the minimum wage hike. I have indicated my intention to exempt from the increase in the minimum wage small businesses with annual sales of less than $500,000. Does the Office of Advocacy have a position on such a small business exemption?

Ms. RYAN. I may be wrong, but are they not already exempt? I thought they were.

Mr. FARIS. Under current law, but under the new law they are not.

Ms. RYAN. Under current law they are exempt, right?

Chairman BOND. No, they are exempt under one law and they are included under another law. So they took it away with one hand and they got everybody with the other hand. So we are going to try to go back and clarify that. Would the Office of Advocacy support that?

Ms. RYAN. We certainly would take a look at that and look at the numbers that we have with regard to the coverage and the impact. We will be happy to provide that answer to you.

[In further response, Ms. Ryan submitted the following:]

You asked if the Office of Advocacy would support an exemption from the Fair Labor Standards Act (FLSA) for firms with gross revenues of less than $500,000. As we stated in our letter to you of May 9, the impact of a minimum wage increase on small business is not dramatic. The vast majority of small businesses pay their employees above the proposed minimum wage level. Large businesses hire more minimum wage workers than the smallest businesses. (Approximately 4.1 million workers in firms with more than 500 employees earn less than the proposed minimum wage as contrasted with the approximately 2.5 million workers in firms with fewer than 10 employees earning at the same level.) Moreover, we find that, to attract good employees, small businesses often must pay their workers more than that paid by large businesses.

At the present time, firms with gross revenues of less than $500,000 are exempt from the FLSA except for their employees engaged in interstate commerce activities. Application of the interstate commerce qualifier narrows the exemption for small business. This Office historically has been supportive of tiering within legislation, as well as regulations, to lessen the impact on small business. We are, therefore, supportive of an exemption for small firms grossing less than $500,000 from the proposed increase in minimum wage.

Chairman BOND. Appreciate that. Mr. Faris, you look like you might have a view on that subject.

Mr. FARIS. We do have a view. When Senator Kennedy put the little twist in it a few years ago to say if it is interstate commerce then you are still included as a small business. So any time you are at Bob's Florist on Main Street and you run a credit card through the credit card machine you become interstate trade. So you are covered then under the law.

What you have pushed for and others have pushed for is, for instance, one of the promoters and cosigners of the bill is the minority leader of your Committee, Senator Bumpers, who we will miss in this Senate. Senator Bumpers signed onto that bill to be sure that small business got relief from this.

Chairman BOND. I think it is only Senator Pryor who is retiring.

Mr. FARIS. I am sorry, Senator Pryor.

Chairman BOND. Let's not get rid of Senator Bumpers.

Mr. FARIS. But I think the leadership Senator Bumpers has given in that was important and we would like to see that kind of bipartisanship again now.

Chairman BOND. Ms. Ryan, you testified that the Office of Advocacy lost on product liability, but SBA Administrator Lader at Monday's Small Business Week breakfast told the group there that the chief counsel has the liberty and responsibility to disagree with the President. He went on to say there has really been no difference of opinion on small business issues between Jere Glover and the President, and that the chief counsel has seen eye-to-eye with the President and has not had to use his independence. Which is correct?

Ms. RYAN. Mr. Glover has taken positions on issues long before the Administration has spoken on them. I think when we are talking about independence I think it important to keep in mind that what we are trying to do is persuade the Administration as well as Congress as to the reforms that are needed by small business. So it is an evolving process. At one point when you take a picture of where we stand on an issue we may be at variance with the Administration. But then 6 months later we will be together, such as on Regulatory Flexibility, *i.e.*, Judicial review of Regulatory Flexibility.

On product liability, our position was that we were in favor of reform, but the President had certain objections to the bill. The issue is not dead. The President has said he is willing to look at some issues on product liability reform. We will work with the Administration and with the Congress in trying to get those reforms through.

As I said in my testimony, we continue to work on an issue. We do not drop it merely because we have lost it today. We keep on working at it and revisit it until we can get consensus, at least on some of the provisions that small business wants.

Chairman BOND. Now I assume that the chief counsel's position is going to be the same as the President's on the reforms that are needed in product liability to get it signed?

Ms. RYAN. No, I do not think you can assume that yet until we have a specific proposal in front of us.

Chairman BOND. Mr. Moore, is this kind of situation with respect to minimum wage and product liability an example or a reason why you think that further independence is needed?

Mr. MOORE. As I said in the statement, the reality of it is you are appointed by the President and you report for resources and your employee levels to the administrator of the agency. You cannot get too far out in front on anything in opposition to them without the fear of suffering some sort of reprisal. That is the reality of the situation. Until it is truly independent and it is taken out of SBA, you are going to run into this situation time and time again.

The issues that Mr. Faris speaks of are clear and represent the position of small businesses nationwide. If the advocate is not supportive of these positions—it goes without saying—you can see the reasons why.

Chairman BOND. Ms. Ryan, one final measure. If I recall correctly, the biggest vote getter at the White House Conference was on the need for the independent contractor tax simplification act. Does the counsel's office has a position on the measure that Senator Nickles and I have sponsored?

Ms. RYAN. We will be happy to submit one on it. We certainly have been working with the tax chairs and with IRS. I think, as you know, IRS has made some progress, but they have gone as far as they can administratively, and Commissioner Richardson has said legislation is needed. So we will be happy to work with you on that and comment on your proposal.

Chairman BOND. We would appreciate that. Commissioner Richardson, I would agree, is doing the best job possible with the 20-factor common law test. When we introduced the measure I held up the booklet, the 146-page booklet that the IRS had issued trying to simplify the independent contractor test. I think that is a measure of the problem where we stand.

[In further response, Ms. Ryan submitted the following:]

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

AUG 27 1996

The Honorable Christopher Bond
Chairman
Committee on Small Business
United States Senate
Washington, DC 20515

Dear Senator Bond:

This is in response to your request as to the position of Office of Advocacy[1] with regard to bill S. 1610, the Independent Contractor Tax Simplification Act. We support the main premise of the bill, mainly that a clear standard for worker classification should be established so that small business owners can discern with confidence whether a worker is an independent contractor or an employee. The decision to hire an independent contractor or an employee should be based on sound business practice and not on fear of tax penalties or hopes for tax based advantages. S. 1610 sets out clear tests and would go a long way toward establishing objective criteria.

An issue that remains to be addressed is criteria for determining whether a service receiver is legitimately hiring an independent contractor or seeking a competitive advantage by characterizing its employees as independent contractors. This has been the central focus of the hearings in the Ways and Means Committee on a similar bill offered by Rep. Christenson, HR 1792 and we commend the record of those hearings to your Committee. In addition, the Tax Chairs of the White House Conference on Small Business have addressed this issue, using S. 1610 as a starting point. *Attached, for the record, is a copy of the testimony which Tax Chairs Sandy Abalos, Debbi Jo Horton and Joy Turner gave to the Ways and Means Committee.

Chairwoman Johnson of the Ways and Means Oversight Subcommittee has asked the Treasury Department for a determination on whether there is an inherent cost advantage for a business which classifies workers as independent contractors rather than as employees. We think this will be very useful information for Congress. Even if there is a differential, however, the questions remains as to how restrictive the criteria should be without adversely affection competition. The opportunity for economic independence and free enterprise, which independent contractor status provides, is also an important goal. Legislation can be crafted that will balance competing public policy claims while still providing the clarifying guidelines

[1] The views expressed in this letter are solely those of the Office of Advocacy.

which small businesses need.

The government's interest, as expressed by IRS Commissioner Richardson, is served as long as each entity pays its fair share of the appropriate tax. To that, the Office of Advocacy would add also that the focus of the independent contractor classification should be on "independence" (the businessman who controls his own work). That focus has a strong emotional pull for all small business owners and is the equalizer that makes the trials, tribulations and uncertainty of ownership worthwhile. The small business community's strong recommendation at the White House Conference to clarify the independent contractor issue is evidence of that.

We hope the Committee finds our comments helpful.

Very sincerely,

Mary K. Ryan
Deputy Chief Counsel

[*Copies of these testimonies can be obtained from the House Committee on Ways and Means -- Hearing date: June 20, 1996]

Chairman BOND. Mr. Faris, independent contractor, how important is that for small business?

Mr. FARIS. It is huge for small business and it is becoming even larger. It is one of those frustrations, Senator, it is not just the law. It is the fact that it depends on which agent came to see you which year to make what value judgment. So an agent tells you 1 year, these people are independent contractors; they fit the guidelines. Then 2 years later you are audited and somebody comes to see you, except now they think they are not covered. Therefore, you owe all the back taxes and penalties——

Chairman BOND. And interest.

Mr. FARIS [continuing]. And interest on all that money. It is just you are caught both ways. When I talked to the commissioner about that in a meeting a few months ago she said she was very amenable to having that clarified; it would be easier for the agency. So I invited Treasury to come down with a number of you, you and Congressman Christensen from the House, let's sit down around her table at IRS and get it worked out. That is what small business does.

We get very frustrated. We do not understand why something that simple cannot be satisfied, done with, and get on with life. We get very frustrated.

Chairman BOND. I might add on behalf of a lot of small businesses I have talked to, you guess wrong on that independent contractor interpretation and it is a guillotine. For a lot of small businesses that can be the final blow. If the test is so complex—a lot of people tell me, you may not be able to read the fine print but the headlines say the IRS wins. If they decide that these were employees, they nail you, and 90 percent of the time they win and this can be fatal to a small business.

Thank you very much. I express my appreciation to the members of this panel as well as the first panel. To those of you who have joined us, as always, we welcome written comments or calls about issues that are of importance to small business. Our staff here has tremendous input from representatives of small business. We encourage that. We need to hear from you what your concerns are. We in this Committee believe that we can be a useful voice, and an ear as well, for small business.

Thank you very much for joining us today. This hearing is concluded.

[Whereupon, at 11:45 a.m., the committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

PREPARED STATEMENT FOR SENATOR JOHN WARNER
COMMITTEE ON SMALL BUSINESS
JUNE 5, 1996

I commend Chairman Bond for holding this hearing on the small business agenda. As the economic growth of the country continues to plod along at unacceptably low levels, we must do everything possible to help small business create jobs and a vibrant economy. During a time of big corporate downsizing and increased global competition, getting government out of the way must be a top priority both for the Congress and for the administration.

The 104th Congress has pushed aggressively for government reforms which would go a long way toward freeing small businesses from the shackles of government. I have been disappointed, however, in the lack of support that we have seen from the Clinton Administration on this very important matter.

In June 1995, President Clinton invited 2,000 delegates from across the nation to its Conference on Small Business. The participants at this conference produced a list of common sense recommendations to free small businesses from the burdensome shackles currently placed on them by the federal government. Unfortunately, of the top 26 recommendations made by the delegates, the Clinton Administration has opposed, at least in part, 22, and the administration's support for two others is in question. The President has vetoed 10 legislative provisions implementing these recommendations, opposed Congressional action on 4 other recommendations, and failed to fully implement 8 recommendations that federal agencies have authority to implement without Congressional action.

President Clinton has vetoed or threatened to veto such recommendations of the White House Conference on Small Business as

- a balanced federal budget and the Balanced Budget Amendment;
- regulatory reform;
- OSHA reform;
- product liability reform;
- Superfund reform;

- protection of private property rights;
- estate tax reform;
- health insurance for the self-employed;
- capital gains tax reduction;
- the TEAM Act, which would promote employer-employee cooperation;
- repeal of the Davis-Bacon Act; and
- increased expensing.

President Clinton has also obstructed progress on Conference recommendations to ensure regulatory fairness and to simplify the tax code for independent contractors.

I am particularly disappointed that the Clinton Administration has disregarded the law requiring agencies to reduce the number of hours businesses must take to comply with government paperwork. Instead, agencies in the Clinton Administration have fudged the numbers and have already planned to postpone implementing major rules into the next fiscal year. This failure to obey the law is simply unacceptable.

I am also deeply disappointed in the performance of the Office of Advocacy in the Small Business Administration. This office is supposed to represent to the administration an independent voice for small businesses. In the Clinton Administration, however, the office has been far too quiet in weighing in on issues that affect small businesses. For example, the Office of Advocacy did not even talk to the administration about the severe problems for small businesses resulting from the President's veto of the product liability bill and the President's call for an increase in the minimum wage.

President Clinton speaks repeatedly about enacting public policies that benefit working Americans. Unfortunately, the President's record contradicts his rhetoric. I sincerely hope that in the remaining days of the 104th Congress, President Clinton will revisit the common-sense recommendations that emerged from his Conference on Small Business and work cooperatively with the Congress to enact this important agenda into law.

COMMENTS FOR THE RECORD

June 19, 1996

The Honorable Christopher Bond
Chairman, Senate Committee on Small Business
428A Russell Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

On behalf of Associated Builders and Contractors (ABC) and its 18,500 member companies, I would like to commend you and the Committee for conducting the June 5 hearing on the implementation of the small business agenda. A majority of ABC's members are small businesses. In fact, the U.S. Small Business Administration has identified construction contractors as one of the top small business-dominated industries responsible for generating a significant number of new jobs annually. I would like to submit the enclosed summary of some of ABC's top small business concerns to be included in the hearing record. Again, thank you for conducting this important hearing to draw attention to small business issues.

Sincerely,

Charlotte W. Herbert
Vice President, Government Relations

Enclosure

1300 North Seventeenth Street ■ Rosslyn, Virginia 22209 ■ (703) 812-2000

ABC

ISSUE BRIEF

KEY SMALL BUSINESS ISSUES

SALTING ABUSE

A practice known as "salting" abuse is increasingly plaguing small businesses in this country. Salting abuse is the placing of trained union professional organizers and agents in a non-union facility to harass or disrupt company operations, apply economic pressure, increase operating and legal costs, and ultimately put the company out of business. These avowed objectives of union agents are accomplished through filing numerous frivolous unfair labor practice complaints or discrimination charges against the employer with the National Labor Relations Board (NLRB), the Occupational Safety and Health Administration (OSHA), and the Equal Employment Opportunity Commission (EEOC). Each charge can cost many thousands of dollars to defend, and many small businesses have literally been put out of business by the prohibitive legal costs associated with defending themselves. Initially directed at open shop construction contractors, salting abuse unfortunately is spreading to other industries, including the retail and service industries. The White House Conference on Small Business included protecting small businesses from abuses and intimidation practices by organized labor under the National Labor Relations Act in its 1995 recommendations (No. 57). The present NLRB has abandoned its position as a neutral arbiter in labor relations, instead allowing its procedures to be abused by unions, legitimizing and forwarding the unions' unscrupulous "salting" of companies.

REPEAL OF THE DAVIS-BACON ACT

Repeal of the Davis-Bacon Act ranked in the top 25 of the White House Conference on Small Business's recommendations. The Davis-Bacon Act, by mandating that the "prevailing wage" -- usually the union wage rather than the market wage for the area -- be paid on federally funded construction projects, inflates the cost of public construction by an average of 5 to 15 percent, and as much as 38 percent in some rural areas. Studies show that the Davis-Bacon Act reduces the number of minority workers in the construction industry by 25,000 per year. Additionally, the Act's restrictive work practices also tend to limit the market by limiting bidders on federal construction projects to just a few companies that are set up to deal with the act's complexities. This reduces the number of small and emerging businesses that can bid on public projects. In addition to these economic inefficiencies, the Act is an administrative nightmare, and has been shown to invite fraud and abuse at the taxpayer's expense. The Oklahoma Labor Commissioner has discovered fraud in the Davis-Bacon wage survey process, including falsified wage survey forms listing phony projects staffed by phony workers and listing grossly inflated wages. Fraud is currently being investigated in many other states, including Missouri and Ohio. The Clinton Administration has vowed to veto Davis-Bacon repeal and keep this special interest handout flowing, despite its its being riddled with fraud and abuse.

Associated Builders and Contractors | Government Affairs Department
1300 North Seventeenth Street | Rosslyn, Virginia 22209 | (703) 812-2000

ESTATE TAX RELIEF

Family owned businesses give American families a sense of pride and accomplishment critical to the growth of free enterprise in our country. When the owner of a company dies, however, the value of the company is added to the owner's estate and is taxed after exemptions. Federal estate tax rates are currently so high that families must often sell their businesses to pay the taxes, which in turn creates disruption for employees, customers and suppliers. Additionally, complying with federal estate tax law is costly -- the Family Enterprise Center found that the average family business spent nearly $20,000 in legal fees, $11,900 for accounting fees, and $11,200 for other advisors preparing for estate taxes. Estate taxes not only jeopardize the survival of family-owned construction companies, they also divert critical funds to estate costs that could be invested in the business. ABC is strongly supportive of legislation to relieve the estate tax burden on businesses, and ultimately eliminating the estate tax. Estate taxes received the fourth-highest amount of votes in the White House Conference on Small Business' 1995 recommendations. Unfortunately, President Clinton vetoed the estate-tax reform provisions in the Balanced Budget Act.

INDEPENDENT CONTRACTOR SIMPLIFICATION

Independent contractor classification simplification received the most votes in the 1995 White House Conference on Small Business. As evidenced by this, independent contractor simplification is a high priority for small businesses. The Internal Revenue Service relies on a 20-factor test to be classified as an independent contractor, which is largely subjective and arbitrary. ABC believes that the test for classification should be clear and simple, especially when back-tax assessments imposed are often large and potentially bankrupting. The construction industry faces unique problems due to its cyclical nature and high number of transient and seasonal workers. Independent contractors are often an ideal answer to a pressing demand for the specialized skills and know-how often required to complete short-term projects. The IRS has demonstrated an aggressive dislike of independent contractors, especially within the construction industry, subjecting small businesses to onerous audits and unfair penalties.

CAPITAL GAINS TAX REFORM

The 1986 Tax Reform Act constituted the largest capital gains tax hike in more than 50 years. It raised the top marginal tax rate on long-term capital gains (assets held for more than one year) from 20 percent to 28 percent -- a 40 percent increase. Increasing the exclusion for capital gains would unlock hundreds of billions of dollars of unrealized capital gains, in a single stroke promoting allocation of capital and increasing capital formation, and unleashing further economic growth and job creation. Contrary to opponents' arguments that a capital gains cut will be a tax cut for the rich, a capital gains tax cut would actually increase taxes paid by the wealthy and expand economic opportunities for the poor and working-class by encouraging capital formation, new business creation, and investment in capital-starved areas including inner cities. The White House Conference on Small Business rated capital gains tax reform in its top 40 issues for 1995. President Clinton vetoed the Balanced Budget Act which would have reduced capital gains tax rates.

REGULATORY/OSHA REFORM

The myriad regulations and administrative requirements imposed by federal agencies, however well-intended to benefit the public, place a disproportionate, perhaps crippling burden on small businessmen and women -- who actually create the vast majority of jobs in America. As mentioned earlier, a majority of ABC's members are small businesses -- and construction is one of the most highly regulated industries today. A primary example of the counterproductiveness of federal regulators is the Occupational Safety and Health Administration (OSHA). Worker safety must be given the highest level of priority by businesses. OSHA, however, has lost sight of its goal of improving worker safety and has become overly concerned with issuing raw and arbitrary numbers of citations, including paperwork errors which have very little or no effect on workplace safety, rather than rewarding exemplary safety standards and programs and cultivating proactive safety procedures. The Clinton administration has spoken out of both sides of its mouth on OSHA reform, making rhetorically popular statements on cost-benefit analysis and denouncing OSHA's reputation as "a nitpicky, overzealous enforcement agency," while at the same time threatening to veto legislation which would address these very issues.

For the construction industry, excessive regulation translates into higher costs that are eventually passed onto the consumer for private sector contracts. Over-regulation on public sector contracts costs the federal government and the taxpayers millions of dollars per year. We need to unleash the productivity of American small businesses by streamlining the regulatory process and putting it in the hands of localities, not unaccountable Washington bureaucrats who think they know what is best for American businesses. Regulations must be enacted in such a way that benefits outweigh costs, and must be based on sound science. Additionally, regulations should be reviewed periodically to ensure that they are not outdated, and ample opportunity should be available to challenge in court harmful government regulatory decisions, so that bureaucrats are held accountable for their actions.

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